DEPARTMENT OF JUSTICE CONFIRMATIONS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

THE NOMINATIONS OF EVAN L. HULTMAN, OF IOWA, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF IOWA; AND BEVERLY E. LEDBETTER, OF RHODE ISLAND, TO BE ASSISTANT ATTORNEY GENERAL FOR THE OFFICE OF RESEARCH STATISTICS AND SPECIAL PROJECTS

APRIL 22 AND MAY 5, 1982

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CONTENTS

THURSDAY, APRIL 22, 1982

STATEMENTS OF SPONSORS

	Page
Grassley, Senator Charles E	1
Jepsen, Senator Roger W	2

OTHER STATEMENTS

Rasinski, Dorothy	38
Nard, John A	46

TESTIMONY OF NOMINEE

Hultman, Evan L	14

PREPARED STATEMENTS AND OTHER SUBMISSIONS

Jepsen, Senator Roger W	3
Article, "Maj. Gen. Evan L. Hultman, a Great Iowan," from the Congressional Record, vol. 127, No. 118, July 31, 1981	3
Nard, John A.:	
Letters to:	
Judge Edward McManus, from D. E. Zaremba, February 18, 1971	53
Judge Edward McManus from Lewis Contouris and Donald C. Warner, April 22, 1970	54
Thurmond, Senator Strom:	
Documents from:	
Kenneth C. Crawford, Director of Education and Training, Federal Judicial Center, letter, April 19, 1982	5
Robert A. McConnell, Assistant Attorney General, Office of Legislative Counsel, letter, March 12, 1982	7
Senators Orrin G. Hatch and Dennis DeConcini, letter, April 16, 1982, to Robert A. McConnell, Assistant Attorney General	10
Attachment, letter from Roger L. Norton to Senator Charles E. Grassley, December 3, 1981	13
Richard C. Turner, U.S. attorney, Southern District of Iowa, letter, April 12, 1982	25
Roxanne Conlin, U.S. attorney, press briefing, September 5, 1978, with attachments	27
Lester B. Salans, Acting Director, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, letter, April 19, 1982	44
Senator Strom Thurmond, letter, to James R. Hynes, April 13, 1982	45
James R. Hynes, mailgram, to Senator Strom Thurmond, April 21, 1982	45

WEDNESDAY, MAY 5, 1982

STATEMENTS OF SPONSORS

Pell, Senator Claiborne	65
Chafee, Senator John H	66

TESTIMONY OF NOMINEE

Page
Ledbetter, Beverly E. 67

OTHER SUBMISSIONS

Ledbetter, Beverly E., receipts for certified mail, dated December 21, 1981, and April 15, 1982 75
Thurmond, Senator Strom:
Memoranda from:
Director, Disclosure Operations Division TX:D, Internal Revenue Division, November 10, 1981 68
Acting Director, Disclosure and Security Division, Internal Revenue Service, April 16, 1982 71

DEPARTMENT OF JUSTICE CONFIRMATIONS

THURSDAY, APRIL 22, 1982

U. S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 4:10 p.m., in room 2228, Dirksen Senate Office Building, Senator Strom Thurmond (chairman of the committee) presiding.

Present: Senator Grassley.

Staff present: Vinton DeVane Lide, chief counsel; Duke Short, chief investigator; Bill Christensen, investigator; Allan Spence, investigator; and Pamela Swanner, clerk.

NOMINATION OF EVAN L. HULTMAN

The CHAIRMAN. The committee will be in order.

The purpose of this meeting today is to hold a hearing on Evan L. Hultman, of Iowa, to be U.S. attorney for the Northern District of Iowa. Senator Grassley, you may proceed.

STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. First of all, Mr. Chairman, I want to thank you for the personal attention that you have given to this nomination and particularly because you are here yourself taking time out of your busy schedule to chair this hearing. That means a great deal to me, and I am sure it means a great deal to Evan Hultman.

I have made several statements both on the record for other meetings before this committee and also in the press about my support for Evan Hultman. I have known him for at least 25 years. I have known him to be a faithful county attorney, a good attorney general for the State of Iowa, 8 years district attorney for the Northern District of the State of Iowa, the same position that he has been nominated for now. He has the background and the devotion to duty that the people of the United States have come to expect from a public servant. It is with that knowledge that I have about him, knowing him personally for a long time, knowing about his professionalism, about his devotion to duty, and about his personality that I support this nomination and present it to you now for consideration.

Again I want to express my appreciation to you personally for the time you are giving to this nomination.

The CHAIRMAN. Thank you very much, Senator. We are delighted to have you here, to have your high endorsement of General Hultman.

I now would be glad to hear from Senator Jepsen from Iowa, the other U.S. Senator from Iowa.

STATEMENT OF HON. ROGER W. JEPSEN, A U.S. SENATOR FROM THE STATE OF IOWA

Senator JEPSEN. Thank you, Mr. Chairman. It is my honor today to introduce Evan L. Hultman to the committee. Curly, as he is known to those of us who have known him all of our lives, graduated summa cum laude from the University of Iowa with a bachelor of arts degree in 1949. He received a juris doctorate degree with honors from the same university in 1952.

I would like at this time, Mr. Chairman, to ask for my remarks and the attachment that I have to the remarks, which is a copy of my remarks about Evan Hultman that was put in the Congressional Record in the Senate on July 31, be entered into the record. Then I will abbreviate my remarks.

The CHAIRMAN. Without objection, your entire statement, Senator, will go into the record.

Senator JEPSEN. Mr. Chairman, I would just like to say to your committee that Evan Hultman enjoys broad and bipartisan support from Iowans in his effort to be confirmed as U.S. attorney. As a personal acquaintance with nearly a life-long personal acquaintance with Evan Hultman, I can assure you the record and the facts speak clearly for themselves. They show him to be a qualified and deserving nominee. I am confident that the committee will act accordingly.

It has been a long time since his appointment was first introduced. I trust that we will get early and affirmative positive action on this.

I have known Evan Hultman for many years. I know him not only as all of these things that he is touted for here: A juris doctor, honor graduate, a major general, and national president of the ROA, and former president of the Iowa Federal Bar Association, and all of this long list of credentials. I know him also as a man who coaches little league ball. After his race for Governor, in which he did not succeed in the State of Iowa, the first thing he did when he came home was to reorganize a Boy Scout troop and start again serving the Boy Scouts.

I know him as a man who has gone neighbor to neighbor and door to door in the muscular dystrophy drives and other campaigns, the United Way, and so on. I was from the same county, and I served as a young man in some of these same campaigns with him.

He is a person who has dedicated his life to giving service to his fellow man. He has the complete and enthusiastic support and endorsement of our entire congressional delegation and of the people of Iowa. I will be watching closely and will be looking forward to seeing an early approval of this candidate. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

[The prepared statement and article follow:]

PREPARED STATEMENT OF SENATOR ROGER W. JEPSEN

It is my honor today to introduce Evan L. (Curly) Hultman to the committee. Curly graduated summa cum laude from the University of Iowa with a bachelor of arts degree in 1949. He received his juris doctorate degree cum laude from the same university in 1952.

Curly has had a distinguished legal career. Admitted to the general practice of law in Waterloo in 1952, he did civil and criminal trial work and pleaded cases before the Iowa and United States Supreme Courts.

He was twice elected and served as the attorney general of the State of Iowa. He has served two terms as United States Attorney in Iowa. Curly Hultman has also served two terms as general legal counsel for the United States Junior Chamber of Commerce.

He is a former president of the Iowa Federal Bar Association and was elected national vice president of the Federal Bar Association in 1980.

A major general in the Army Reserve, Curly Hultman was recently elected president of the 128,000-member Reserve Officer Association.

Curly Hultman enjoys broad and bipartisan support from Iowans in his effort to be confirmed as United States attorney. The record and the fact will speak clearly for themselves. They show Evan L. Hultman to be a qualified and deserving nominee, and I am confident the committee will act accordingly.

Mr. Chairman, I have brought with me a copy of a floor statement I made regarding Mr. Hultman's nomination. I would like to request that it be entered into the committee record.

Mr. Chairman, as the committee's work on the Hultman nomination draws to a close, I want to take this opportunity to express my deep personal thanks for the fair and just manner in which you have conducted the Judiciary Committee's investigation. You have set an example that I and other colleagues look to with admiration.

[From the Congressional Record, Vol. 127, No. 118, July 31, 1981.]

MAJ. GEN. EVAN L. HULTMAN, A GREAT IOWAN

Mr. JEPSEN. Mr. President, today I take great pleasure in honoring a fellow Iowan who has contributed much to his country. Maj. Gen. Evan L. Hultman, USAR, of Waterloo, Iowa, has recently been elected to the distinguished position of president of the 128,000-member Reserve Officers Association of the United States. General Hultman has given long and dedicated service to his country, State, and community. He is an outstanding leader and his career has been one of great achievement.

Evan Hultman was born July 15, 1925, in Albia, Iowa. He graduated summa cum laude from the University of Iowa with a bachelor of arts degree in political science in 1949. He received his juris doctor degree in law, cum laude, also from that university in 1952.

The general has had a distinguished civilian career. Admitted to the general practice of law in Waterloo in 1952, he did civil and criminal trial work and actual pleading of appeal cases before the Iowa and U.S. Supreme Courts. He was twice elected and served as the attorney general of the State of Iowa and also completed two terms as U.S. attorney in Iowa. General Hultman was twice appointed general legal counsel, U.S. Junior Chamber of Commerce and was elected and served two terms as Black Hawk County attorney.

A former President of the Iowa Federal Bar Association, he also was elected as National Vice President of the Federal Bar Association in 1980. Evan Hultman currently is a practicing trial attorney whose clients include a major industrial city in Iowa.

His military career has been equally illustrious. He entered military service in 1943 as a private in the infantry and rose to captain before his discharge in 1948. After leaving active duty, he joined the U.S. Army Reserve in 1947.

General Hultman served in a variety of assignments with the 410th Infantry Regiment, including Battalion Intelligence Officer, Assistant Operations Officer, Headquarters Commandant, Battalion Executive Officer, and Battalion Commander. He left the regiment in 1959 to become Division Judge Advocate with the 103d Infantry Division until 1964, when he was assigned to the 5040 USAR School as an instructor. In 1973 he became the commanding officer of the 450th Military Intelligence Detachment (Strategic).

In 1974, he was assigned as the Deputy Assistant to the Judge Advocate General for Reserve Affairs at Headquarters Department of the Army, and in 1975 was pro-

moted to brigadier general in the Army Reserve. He assumed command of the 103d Support Brigade in 1976. His unit then was selected by Department of the Army in competition with other Support Brigades to be the only Army Reserve Corps Support Command (COSCOM). After serving as deputy commander of the COSCOM from 1977 to 1979, he was selected as commanding general in 1979 and promoted to major general.

The general has completed numerous military schools, including the Army Command and General Staff College, the Industrial College of the Armed Forces, and the Judge Advocate General School.

Among his awards and decorations are the Meritorious Service Medal with Oak Leaf Cluster; Army Commendation Medal; Army Good Conduct Medal; World War II Victory Medal; American Theatre Ribbon; World War II Occupation Ribbon; Armed Forces Reserve Medal; Asiatic-Pacific Theatre Ribbon; and the Army Reserve Component Achievement Medal.

The general has been an activist in civic affairs throughout his adult life. He served as National Legislative Committeeman of United Cerebral Palsy, chairman of the Iowa Heart Fund, and was three times council president of the Boy Scouts of America. He was awarded the Silver Beaver and the Silver Antelope for this service. Additionally, he is a past president of the Waterloo Junior Chamber of Commerce and vice president of the Iowa Junior Chamber of Commerce.

Evan Hultman also has served ROA in a variety of capacities. He was twice appointed National Resolutions Chairman, is a past president of the Iowa Department, past chairman of the Army Affairs Committee, and National Committeeman. In 1980 he was elected as vice president, Army.

General Hultman is a truly outstanding Iowan and American. His dedicated and meritorious service to his community, State, and country has proven him highly worthy of his newly elected position as president of the prestigious Reserve Officers Association.

It indeed gives me pleasure to extend my congratulations and my thanks to Evan Hultman for his many years of dedicated service. His has been a life of accomplishment and the Senate from Iowa takes pride in honoring him today.

The CHAIRMAN. General Hultman, I want to say that you are to be complimented that you are endorsed so highly by two able, dedicated, and highly regarded Senators.

Mr. HULTMAN. Thank you, sir. I am honored.

The CHAIRMAN. I will now ask that you stand up and be sworn.

Mr. HULTMAN. Yes.

The CHAIRMAN. The evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. HULTMAN. Yes, sir.

The CHAIRMAN. I might say that I have received a number of letters of recommendation for Mr. Hultman including a letter from the Governor of Iowa, the Honorable Robert D. Ray; Mr. Edwin Youngblood, president of the Federal Bar Association; Prof. Ronald Carlton, Washington University School of Law in St. Louis; Mr. Max Henson, director of the Idaho Department of Agriculture; the Black Hawk County Bar Association; and Mr. Ray Free, State of Utah House of Representatives; as well as many others which will be made a part of the committee files.

I have just received a letter here from Kenneth C. Crawford, director of education and training, Federal Judicial Center, without objection, which will go in the record.

[Material referred to follows:]

FEDERAL JUDICIAL CENTER,
Washington, D.C., April 19, 1982.

Senator STROM THURMOND,
Chairman, Senate Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR THURMOND: I am very grateful to you and your committee for giving me the privilege of testifying in behalf of Evan L. Hultman.

I first met Mr. Hultman in August of 1966 at Fort Carson, Colorado. At that time I was the Staff Judge Advocate for the Third United States Army. In August of 1967, I was appointed Commandant of the Judge Advocate General's School in Charlottesville, Virginia. I retired from this position and the Army on May 31, 1970. During these years of active military service I came to know Mr. Hultman very well. We have many mutual friends and common interests.

I have been and remain tremendously impressed with Mr. Hultman. I have found him to be a profound and diligent student of the law. His devotion to his country is very evident and he has been an inspiration to those who have had the privilege of serving under him. The military units he commanded have been among the best I have ever seen.

On June 1, 1971, I accepted my present position, Director of Education and Training, Federal Judicial Center, Washington, D.C. In this capacity I am charged with the responsibility of conducting continuing education and training for the members of the federal judicial system. Since I have been in the federal judiciary I have found that Mr. Hultman and I share a host of friends including judges, clerks, probation officers and others. I note that he is held by them in the same high esteem that I have for him. As a United States Attorney he was recognized for his industrious cultivation of the learning of the law. My judicial friends speak of him as possessing great merit, integrity, patience, a spirit of friendliness, and resolute industry. His enthusiasm and energy are dominant traits that would make him a great asset to any organization. I simply cannot recommend him too highly for the position he seeks.

If I can be of further assistance please do not hesitate to call upon me.

Sincerely,

KENNETH C. CRAWFORD,
Director of Education and Training.

The CHAIRMAN. The hearing today is on the nomination of Mr. Evan Hultman to be U.S. attorney of the Northern District of Iowa. There has been a great deal of controversy surrounding Mr. Hultman. It is my intention today to obtain the facts surrounding this controversy and to insure that Mr. Hultman is given a fair and impartial hearing. With this in mind, it should be noted that Mr. Hultman's name first came to the attention of the committee in connection with the committee's investigation of the Public Integrity Section of the Department of Justice and its handling of the *Jack Nard* case. The investigation of the Public Integrity Section commenced when Senator Kennedy was chairman of this committee and, I might add, is ongoing at this time. Senators Hatch and DeConcini conducted what I consider to be a comprehensive and good-faith investigation of this very complex matter. After a complete and thorough review of the many allegations surrounding the *Nard* case, Senators Hatch and DeConcini submitted a report to the Department of Justice with the request that the Department review the litigation and investigations involving Mr. Nard. They also specifically requested that this review include the role played by Mr. Hultman as a former attorney in the Northern District of Iowa and his presentation of information to three grand juries.

On March 12, 1982, the Department of Justice responded to this request concerning the Nard investigation. I would like at this time to quote part of that letter:

We have carefully and thoroughly examined the Senate committee report and other materials forwarded to us. The Attorney General has requested that I write to

you with our conclusions on this matter. Based upon our analysis of the materials provided, we have determined that because there are no allegations against any person covered by the special prosecutor statute, a special prosecutor cannot be appointed. In addition, whether or not the allegations are covered by the special prosecutor statute, we find no basis for convening a new grand jury to investigate the perjury allegations made by Mr. Nard. Finally, there is nothing in the record to suggest that any systematic review of prosecutorial discretion is called for in this case.

The letter goes on to state:

It should be noted that the perjury allegations are not new. The allegations were examined by four grand juries, two Federal District Court judges, a trial jury, and the Court of Appeals for the Third Circuit. In each case Mr. Nard's allegations were found to be without merit.

The materials pertaining to this case also fail to support allegations that any individual received a bribe for actions taken against Mr. Nard. Nor is there any basis whatsoever for any further investigation of criminal conduct on the part of the Department of Justice officials involved in the processing of the investigations at issue. Likewise, there is no proof to support Mr. Nard's claim that Justice Department officials, judges, and politicians formed an alliance to deprive him of his civil judgment. Finally, we conclude that there is no basis to support the allegations of misconduct on the part of Federal prosecutors with respect to the income tax prosecution.

The review which we have completed was conducted in a thorough manner, giving the utmost consideration to the Senate report and the other materials with which we were provided. Our examination convinces us that no further action or review is warranted.

Without objection, I will place this letter in its entirety in the record.

[Material referred to follows:]

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 12, 1982

Honorable Strom Thurmond
Chairman, Committee on the
Judiciary
United States Senate
Washington, D.C. 20510

Rec'd 9:45 3/15/82

Dear Mr. Chairman:

This is to respond to the November 13, 1981, request from Senators DeConcini and Hatch that the Department of Justice review the litigation and attendant investigations involving John A. Nard. We have carefully and thoroughly examined the Senate committee report and other materials forwarded to us. The Attorney General has requested that I write to you with our conclusions on this matter. Based upon our analysis of the materials provided, we have determined that because there are no allegations against any person covered by the Special Prosecutor statute, a special prosecutor cannot be appointed. In addition, whether or not the allegations are covered by the Special Prosecutor statute, we find no basis for convening a new grand jury to investigate the perjury allegations made by Mr. Nard. Finally, there is nothing in the record to suggest that any systematic review of prosecutorial discretion is called for in this case.

The factual record in this matter is quite complex and received detailed examination by our staff. The matter arose from a contract dispute between Armour & Co. and a partnership controlled by John Nard. Armour filed suit for breach of two contracts and obtained two money judgments against Mr. Nard, one in Iowa and one in Pittsburgh. The Pittsburgh judgment was appealed to the Third Circuit, which affirmed. Mr. Nard approached Evan Hultman, then United States Attorney for the Northern District of Iowa, with regard to investigating alleged perjurous testimony offered by Armour in the Iowa trial. Hultman ultimately presented evidence to three grand juries, initially on allegations concerning the Iowa trial and ultimately regarding the Pittsburgh trial as well. In each case, after hearing the evidence, the grand jury declined to issue any indictments.

Mr. Nard unsuccessfully attempted to persuade Richard Thornburgh, then United States Attorney for the Western District of Pennsylvania, to investigate allegations of perjury in the Pittsburgh trial. Mr. Nard also filed a motion to vacate the judgment in the Pittsburgh trial on grounds of fraud and misrepresentation on the part of Armour. District Court Judge Daniel Snyder heard the motion on three occasions and ruled against Mr. Nard, finding that Armour had done nothing fraudulent, that the Armour witnesses were credible and specifically found that Mr. Nard's testimony was "singularly unbelievable." This decision was not appealed.

During the time that Judge Snyder was considering Mr. Nard's motion, Mr. Nard was indicted in Pittsburgh for failure to file tax returns and for income tax evasion relating in part to the monies involved in the contract disputes. He pled guilty to the former counts and nolo contendere to the second charge; he was sentenced to three years probation and ordered to pay a fine.

James Reynolds, Hultman's successor, subsequently conducted a fourth grand jury investigation into Mr. Nard's allegations. After completion of this investigation and consultation with Justice Department officials, Mr. Reynolds concluded that he could not verify any of the charges made by Mr. Nard.

Mr. Nard's allegations are extensive and far-reaching, but may be summarized as follows. He alleges that several of Armour's witnesses committed perjury; then United States Attorney Hultman and a District Court Judge received bribes in connection with the case; then United States Attorney Thornburgh refused to consider Mr. Nard's perjury allegations for political reasons; Justice Department officials obstructed attempts by James Reynolds to investigate Mr. Nard's perjury allegations; former United States Senator Hugh Scott improperly used his political influence to defeat Mr. Nard in his civil litigation; and a former Assistant United States Attorney in Iowa attempted to destroy Mr. Nard's credibility by assisting in the tax prosecution described above.

With respect to the perjury allegations, it is necessary to prove that the witness made a willful, untrue declaration concerning a material matter, which he did not believe to be true. After a complete review of the record in this matter, we conclude that the prosecutive judgment was appropriate.

It should be noted that the perjury allegations are not new. The allegations were examined by four grand juries, two federal district court judges, a trial jury, and the Court of Appeals for the Third Circuit. In each case, Mr. Nard's allegations were found to be without merit.

The materials pertaining to this case also fail to support allegations that any individual received a bribe for actions taken against Mr. Nard. Nor is there any basis whatsoever for any further investigation of criminal conduct on the part of the Department of Justice officials involved in the processing of the investigations at issue. Likewise, there is no proof to support Mr. Nard's claim that Justice Department officials, judges and politicians formed an alliance to deprive him of his civil judgment. Finally, we conclude that there is no basis to support the allegations of misconduct on the part of federal prosecutors with respect to the income tax prosecutions.

The review which we have completed was conducted in a thorough manner, giving the utmost consideration to the Senate report and the other materials with which we were provided. Our examination convinces us that no further action or review is warranted.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

The CHAIRMAN. I commend my colleagues on the Judiciary Committee for their attempt to insure a thorough nonpartisan examination of the subject at hand. However, based on the findings of the Department of Justice that no further action or review is warranted, I must at this time conclude that the Nard investigation also does not warrant further inquiry by the Judiciary Committee. I therefore consider that investigation closed.

I will now turn to the one remaining allegation against Mr. Hultman. Basically, it has been alleged that as an officer in the Army Reserve he did not properly and truthfully complete required Army medical examination forms and may have been less than truthful with Army investigators who were pursuing this matter. I intend today to fully explore this allegation and to lay the entire matter to rest once and for all. I feel that it is only fair to the nominee that we attempt at this time to resolve any questions that may be outstanding concerning his prior actions. Then the entire record will be before the full Judiciary Committee when they consider the nomination.

I have just been handed a letter that was received today addressed to Mr. Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice, Washington, D.C., signed by Senator Hatch and Senator DeConcini. It has an attachment of a letter to Senator Grassley from Mr. Roger L. Norton. Without objection, these letters will be placed in the record.

[Material referred to follows:]

STROM THURMOND, S.C., CHAIRMAN
CHARLES MEC. MATHIAS, JR., MD.
PAUL LAXALT, NEV.
ORRIN G. HATCH, UTAH
ROBERT DOLE, KANS.
ALAN K. SIMPSON, WYO.
JOHN EAST, N.C.
CHARLES E. GRASSLEY, IOWA
JEREMIAH DENTON, ALA.
ARLEN SPECTER, PA.
JOSEPH R. BIDEN, JR., DEL.
EDWARD M. KENNEDY, MASS.
ROBERT C. BYRD, W. VA.
HOWARD M. METZENBAUM, OHIO
DENNIS DECONCINI, ARIZ.
PATRICK J. LEAHY, VT.
MAX BAUCUS, MONT.
HOWELL HEFLIN, ALA.
EMORY SNEEDEN, CHIEF COUNSEL
QUENTIN CROMMELIN, JR., STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

April 16, 1982

Rec'd
10:05
4/22/82

Mr. Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. McConnell:

As you may recall, we wrote the Attorney General on November 13, 1981, requesting the appointment of a special prosecutor or the convening of a new grand jury to act on the abuses identified in our staff report on the two Senate Judiciary Committee hearings and other investigative activities regarding the John A. Nard case. Your March 12, 1982 letter which constitutes the Justice Department's response to our request, does not directly address the concerns raised in the staff report. In fact, a close reading of your letter would indicate that the Department of Justice did not give the report anything approaching the "detailed examination" or "utmost consideration" that you claim. If such examination was in fact made, we can only conclude that your Department must have deliberately ignored the report's conclusions, because the evidence supporting those conclusions was totally ignored in your letter.

Following are the major factual errors and omissions that we have identified in your letter:

(1) You state that Mr. Hultman presented evidence to three grand juries about perjury allegations raised by Mr. Nard and that the grand juries, after hearing this evidence, declined to issue any indictments. The staff report, at pages 33-42, provides documentation that Mr. Hultman withheld information from the grand juries that strongly supported Mr. Nard's allegations that officials of Armour and Co. had in fact committed perjury in the course of civil litigation with Mr. Nard. This point is in no way addressed in your March 12 letter.

The importance of the report's discussion about the withholding of evidence by Mr. Hultman becomes apparent when one studies a December 3, 1981, letter to Senator Charles Grassley from Mr. Roger L. Norton, foreman of the 1974-75 Grand Jury conducted by Mr. Hultman in Iowa. Mr. Norton stated that after reading the aforementioned staff report "several times" he felt that "Mr. Nard has not only suffered a great injustice, but has been deprived of his 'day in court.'" Mr. Norton observed that "I'm most certain that, had all of the material relevant to this matter been presented to us, and had the objective of the proceedings been more clearly defined, we would not have treated the Nard case so lightly." Mr. Norton concluded that Mr. Hultman's "handling of the Nard case, as documented in the report, raises some very serious questions and should, in the eyes of even the most casual observer, disqualify him from further consideration for U.S. Attorney." We attach a copy of the Norton letter for your consideration.

BEST COPY AVAILABLE

(2) Your letter states that Mr. James Reynolds, Mr. Hultman's successor as U.S. Attorney for the Northern District of Iowa, conducted an investigation into Mr. Nard's allegations and concluded that he could not verify any of the charges made by Mr. Nard. This conclusion is misleading. In an August 17, 1981 letter to the two undersigned Senators, Mr. Reynolds stated that "There was never a determination by me or the Grand Jury that: (a) the underlying claims of Mr. Nard of perjury in the two civil cases was true or not, nor (b) that the conduct of the investigation by Mr. Hultman was complete or a proper exercise of prosecutorial discretion." Mr. Reynolds also said he was unable to satisfy himself as to whether Mr. Nard's charges had been "fully aired" by the Justice Department because of a lack of adequate Justice Department records and the inadequacy of a review of the Department's handling of the case by Ms. Mary Wagner, a Justice Department attorney.

(3) Your letter completely ignores the issue of the misleading statements made by Mr. Hultman to the Senate Judiciary Committee in hearings held on the Nard matter on December 11, 1980, and October 7, 1981. (This issue is addressed in considerable detail on pages 63-75 of the staff report.) Such cavalier treatment of an issue of this magnitude severely weakens the effectiveness of the oversight process. If Mr. Hultman can so easily walk away from the contradictory testimony that he delivered before the committee on these two occasions, it is difficult to conclude that future witnesses will not show the same calculated disdain for the Senate hearings process.

(4) Your letter raises a red herring issue in its assertion that Mr. Nard accused U.S. Attorney Hultman and a U.S. District Judge of receiving bribes in connection with the Nard case. Such an allegation is not discussed in the staff report, nor had the staff ever heard such an allegation from any source until it reviewed your letter. In this regard, it is apparent that the Justice Department reacted on the basis of preconceived notions about the Nard case and did not give the staff report a careful reading.

(5) Your letter is misleading in its conclusion that Armour and Co. obtained two money judgments against Mr. Nard, one in Iowa and the other in Pittsburgh, Pennsylvania. Had the Justice Department studied the staff report in any detail, it would have discovered at page 11 that Mr. Nard won a net judgment of $37,000 against Armour in the Iowa case. This point demonstrates the singular lack of care with which the Justice Department analyzed the staff report.

(6) Your letter concludes that there is "no basis to support the allegations of misconduct on the part of federal prosecutors with respect to the income tax prosecutions" against Mr. Nard. (As you know, the tax prosecutions were based on the theory that Mr. Nard had "diverted" funds from the Armour job in Pittsburgh -- a theory based on perjured testimony, as demonstrated in the staff report.) Had you or your staff studied the report, you would have found ample documentation at pages 50-52 of such misconduct by a Hultman aide, Mr. Alan Kirshen. Among the activities of Mr. Kirshen in the tax case was a "strong recommendation" to the Criminal Division of the Justice Department that certain documents in Mr. Kirshen's possession be withheld from Mr. Nard because these documents "may unduly assist Mr. Nard in his defense" against a tax evasion charge. We consider this action by Mr. Kirshen an incredible infringement of Mr. Nard's right to a fair trial. And we find it equally incredible that this disclosure was ignored in your letter to us.

In conclusion, Mr. McConnell, we believe that in view of the record documented by the staff report, together with the Norton letter, which was received by Senator Grassley after the issuance of the report, that the Department should consider consuring Messrs. Hultman and Kirshen for their conduct in handling the Nard case. We appreciate that a grand

jury has been convened to investigate certain aspects of Mr. Hultman's conduct as we had originally suggested; however, we believe that the scope of the investigation be broadened to encompass the Nard case. We also hope that the Department will provide us with a more detailed analysis of the staff report.

Sincerely,

Orrin G. Hatch
United States Senator

Dennis DeConcini
United States Senator

pb
Attachment

Mr. Roger L. Norton
106 Roland Street
Anamosa, Iowa 52205

December 3, 1981

Honorable Charles S. Grassley
232 Russell Office Building
Washington, D.C. 20510

Dear Senator Grassley,

I'm writing in regard to the ongoing Jack Nard/Evan Hultman controversy.

You may recognize me as having been the Foreman of the 1974-75 Grand Jury and one of those whose 1979 interview with the Secret Service was made public via the DeConcini/Hatch report to the Senate Judiciary Committee.

As you may know, Mr. Nard has made available to me a copy of the aforementioned report.

I must admit that, based on my recollection of Mr. Nard and his appearance before our Grand Jury, I was very skeptical about the claims and allegations that recent news reports have attributed to him.

After having now read the report several times, however, I have a very disturbed feeling. Unless the material contained in the report is very selective or incomplete, it appears that Mr. Nard has not only suffered a great injustice, but has been deprived of his "day in court."

While my memory of the Grand Jury proceedings in this matter is somewhat vague at this point, I'm most certain that, had all of the material relevant to this matter been presented to us, and had the objective of the proceedings been more clearly defined, we would not have treated the Nard case so lightly.

My immediate concern and real purpose of this letter is to object to your nomination and continuing support of Mr. Hultman for the U.S. Attorney position. I have no personal animosity toward Mr. Hultman and in fact greatly enjoyed working with him during my term as a Grand Juror.

I do feel, however, that his handling of the Nard case as documented in the report raises some very serious questions and should, in the eyes of even the most casual observer, disqualify him from further consideration for U.S. Attorney.

I would like to emphasize strongly that my opinion in this matter is based on the information contained in the report. If there is additional information of which I should be aware, I would be most happy if it were made available to me.

Respectfully,

Roger L. Norton

Roger L. Norton

CC: Senator Jepsen
Senator DeConcini
Senator Hatch

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The CHAIRMAN. Senator Grassley, if you would take the chair for about 15 minutes, I have got two appointments I have got to fill. I will be back just as quickly as I can.

Senator GRASSLEY. Yes, Mr. Chairman.

TESTIMONY OF EVAN L. HULTMAN, NOMINEE, U.S. ATTORNEY, NORTHERN DISTRICT OF IOWA, ACCOMPANIED BY THOMAS S. REAVELY, ATTORNEY, DES MOINES, IOWA

Senator GRASSLEY. Mr. Hultman, what was your general physical condition prior to 1972?

Mr. HULTMAN. Prior to 1972, Senator, I was in excellent physical condition. In fact, just a few months before, in 1971, I had had a physical examination. It was a time of real great stress for me because I had some very serious trial matters for the Department of Justice. My condition was very, very good.

Senator GRASSLEY. In 1972 you were involved in an automobile accident. Will you please explain to the committee the events which occurred at the time of the accident, to include any hospitalization, the length of that hospitalization, and treatment received and other things related to that?

Mr. HULTMAN. Yes. Early in 1972, it would have been in late January, on my way on a Monday morning to Federal court in Cedar Rapids, Iowa, a schoolbus came out across the highway, did not see me until too late, then saw me, killed its engine, and covered up both lanes of the old highway and both of the shoulders. As a result, I had to take the bus straight on. I woke up under the side of the bus with the gas tank of the bus, the sidesaddle tank right over me. The engine had been pushed back into the seat.

When I came to, I was very terrified, of course, because I knew it was a schoolbus and the time of the morning that it was. The doors and everything were jammed because the engine had been shoved back. I finally was able to put my feet against the steering column and force one of the doors open and scraped myself out. Then I ran to the bus. Fortunately, there was no one on the bus, as I found out.

An ambulance took me—this was not very far from Cedar Rapids, because I was on my way on Monday morning to Federal court. An ambulance took me to the hospital. There they gave me some emergency treatment. I had some lacerations on my face. I later found out that my teeth had left an imprint right in the steering column like you take a paraffin test. After giving me emergency treatment, which I suppose was an hour or an hour and a half, I left and went to the courtroom. So, that was about the size of what transpired that day.

Senator GRASSLEY. You were only in the hospital about an hour or an hour and a half?

Mr. HULTMAN. An hour to an hour and a half. I mean, I had a number of minor items. Those items later then were followed up. But I went to the courtroom then.

Senator GRASSLEY. I want to digress here just for a minute and get an explanation on the letter that Chairman Thurmond inserted in the record from Senator Hatch and Senator DeConcini to Robert

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McConnell, Assistant Attorney General. It did refer to a letter from one of my constituents to me last December.

The concluding paragraph of that letter is this:

> In conclusion, Mr. McConnell, we believe that in view of the record documented by the staff report together with the Norton letter, which was received by Senator Grassley after the issuance of the report, that the department should consider censuring Messrs. Hultman and Kirchen for their conduct in the handling of the *Nard* case. We appreciate that a grand jury has been convened to investigate certain aspects of Mr. Hultman's conduct as we had originally suggested. However, we believe that the scope of the investigation be broadened to encompass the *Nard* case. We also hope that the department will provide us with a more detailed analysis of the staff report.

I would like to point out in regard to that letter for the record that I have had an opportunity to check with the Assistant Attorney General, Mr. McConnell. He had not received a copy of that letter until this afternoon.

The third question that I would like to go to, Mr. Hultman, is this. What, if any, followup medical attention did you receive after you were dismissed from the hospital for that automobile accident that you just described?

Mr. HULTMAN. It was very routine, Senator. During the course of the months that followed, I was into the doctors' offices. They had a number of things to do. They had to take the stitches back out. The dentist worked on a tooth, did a root canal. There were a number of items. I had some urinary problems, infection that I thought at the time had grown out of it because I had had this physical just a year before and had had no problems of any kind.

So, it was a number of minor things that had to do with the various doctors.

Senator GRASSLEY. Who was the doctor that examined you? Where did the examination take place?

Mr. HULTMAN. That would have been Dr. Waterberry. That would have taken place later in that year in November or December timeframe. That would have been pursuant to a number of things that I have referred to. During the course of that time, I had seen Dr. Waterberry, and I had seen a urologist. I had seen the dentist. As a result of all these things, he was the one who did examine me.

Senator GRASSLEY. Do you recall any diagnosis that Dr. Waterberry may have made? What did that diagnosis mean to you?

Mr. HULTMAN. During the course of trying cases and so forth that had transpired in this period of time, as I say, I had these checkups and they did these various items.

In the course of that period of time I was at a point where I wanted to make a settlement as far as my insurance claim was concerned. I did not want to close that out. Although all these things appeared to be minor to me, I was still having these various things that I already referred to including the fact that my neck was still bothering me. He did a series of tests of one kind in nature and then indicated that from these he wanted me to go into the hospital for additional checks. I said to him at the time that these things were minor to me and I was busy, having a very busy schedule, trial schedule, and that, if he would get a private room for me and a telephone, that I would go in at that particular time. So, as a result of these things, to settle my car accident, to make

sure that they were only minor in nature, he indicated that he wanted to make some more tests.

Senator GRASSLEY. Mr. Hultman, was that at Shoitz Hospital?

Mr. HULTMAN. That was at Shoitz Hospital, yes, sir.

Senator GRASSLEY. Tell me, to the best of your knowledge, what transpired while you were a patient in December 1972 at Shoitz Hospital in Waterloo?

Mr. HULTMAN. I went in, as indicated just a moment ago, and Dr. Waterberry did a series of tests, various examinations of one kind and another. As a result of that, he indicated to me that I had elevated blood sugar. And also the term or the phrase was used that I was on the borderline. The reasons——

Senator GRASSLEY. On the borderline of what?

Mr. HULTMAN. The area that he was concerned with at that time evidently had to do with diabetes, as far as that particular item and that particular indication to me. He indicated to me that I had none of the normal symptoms of any kind of diabetes. I did not have any increase in thirst or urination or loss of appetite or no change in my eyes or reduction in weight and so forth. But, at the same time, he indicated to me that I had elevated blood sugar, that I had high blood sugar.

As a result of that, then, he indicated to me that he felt that I ought to go on what I guess I might phrase at that time a preventive care program. What it was was this: One, that I go on the diet, and that particular time they went over a prescribed diet for me, and it was a diet of the same kind of foods that you eat every day, and so forth, but it was a diet of a certain number of calories, among other things. Second, that I start exercising, because I will be very frank about it; I am an old athlete. During this period of time, I had been in a pretty sedentary type of situation, trying a lot of lawsuits. The military assignment that I had was one where again it was very sedentary. So, he said: Two, you need to go on an exercise program. Third, in order to meet and deal with the elevated blood sugar, he said, "I think we ought to go on a trial matter of some medication of some kind."

He indicated he did not know whether or not it was necessary or not but that he felt that he should go ahead with it. As a result of that, those are the things that were indicated to me by him at the time. And those are the things that I then did when I went back out at Shoitz at that time.

Senator GRASSLEY. I think it would be appropriate at this time to state for the record that a review of the medical records at Shoitz Memorial Hospital of Waterloo, Iowa, reflect in part that Mr. Hultman was a patient from December 11, 1972, until his release on December 14, 1972. The admitting doctor was C. A. Waterberry. A review of the clinical history from Shoitz Hospital shows that Hultman's mother was a diabetic. However, the family history was otherwise negative.

The clinical history form further indicated that Hultman was seen by urologists in Sioux City, Iowa, in November 1972 and also reflects the following, and I quote:

Apparently the routine blood chemistries done at that time indicated an elevated blood glucose. On his return to Waterloo, a glucose tolerance test was done as an out-patient at this hospital with a fasting blood sugar reported at 162, peaking at

two hours at 298 milligrams per cent and still 290 milligrams per cent at the end of three hours. Four plus glycosuria with a specimen at one hour, two hours, and three hours.

The clinical history form further indicates notation by Dr. Waterberry to the effect, and I quote:

The patient has been asymptomatic as far as classic symptoms of diabetes. He has had no increase in appetite, no increase in thirst, no increase in urination, and no weight loss.

The clinical history form further indicates that Hultman previously had consulted a urologist in Sioux City, Iowa, with a problem of urethritis. The doctor determined that a possible dilation of urethral stricture might be necessary in the future.

The Shoitz Hospital report also shows that a urinalysis conducted on December 11, 1972, showed a specific gravity of 1.023, and no sugar was evident in the urine. The discharge summary indicates: While in hospital, he showed no glycosuria (sugar in the urine).

The clinical impression given on the discharge summary states: "New case of diabetes mellitus."

Dr. Charles Waterberry of Waterloo was interviewed in November 1981, at which time he indicated that on one occasion it appeared that Hultman had a borderline diabetic condition. Dr. Waterberry was interviewed again in March of this year. He indicated that his records were incomplete inasmuch as he had not been in private practice since July 1, 1974. However, to the best of his knowledge, the particular test which was administered to Hultman in 1972 that determined him to be a borderline diabetic was a glucose tolerance test. This test, along with numerous other laboratory tests, was performed by the Shoitz Memorial Hospital lab in Waterloo, where Hultman had been admitted for the period of December 11, 1972, to December 14, 1972. Dr. Waterberry at this point in 1982 states that his initial determination had been made by a urinalysis test performed a few days prior to Hultman being admitted to the hospital. Dr. Waterberry goes on to state that he had no recollection of any specific comments made by Mr. Hultman during this early phase but does recall that Hultman was completely unaware of his diabetic condition. Dr. Waterberry commented that in his opinion Hultman was a minimal or borderline diabetic at the time the initial testing was performed.

Dr. Waterberry further stated that under current standards for determining a patient to be a diabetic, he would not label anyone exhibiting the same symptoms as Hultman did back in December 1972, as now having diabetes. The standards for labeling a person diabetic were different at that time. Since then, the determining standards have been changed.

Now to the next question. Records in possession of the committee indicate that on January 22, 1974, you were admitted as an out-patient to the Mayo Clinic in Rochester, Minn. Would you tell us the events leading up to and the reason for your examination at the Mayo Clinic?

Mr. HULTMAN. Yes, Senator. A number of years before, our youngest daughter, named Heidi, was a small child at the time. It was the time I was the attorney general of Iowa. She was hit by a car in front of our house crossing the street to go to school. As a result of that, she had a very serious condition. In fact, Dr. Water-

berry, the same doctor, handled the matter. She was referred by him to Mayo's. She had a very early experimental type of operation, cardiovascular. It was a life-or-death type of situation and survived it and got along great. But she had to go back periodically for examinations. Sometime in November, December, in that timeframe, she was to go to Mayo's. My wife said to me: "You don't get to see that much of your youngsters; why don't you go along with Heidi to Mayo's at the time of her checkup and while you are there get a checkup of your own."

So, the arrangements were made by the doctor in the same way that they have always been made. I did go with her. I took an examination there, physical examination, while I stayed in the hotel, went and took the various tests while my daughter was likewise taking tests.

That was the reason that I went, was because my daughter was going and, second, as a result of her going, an opportunity to be with her and a chance for me to have a checkup also.

Senator GRASSLEY. Is Dr. Waterberry the one that made the arrangements?

Mr. HULTMAN. Dr. Waterberry has been the one to handle any medical matters of any kind for the family. He is the one who likewise, not only for my daughter and I at this time but for my mother-in-law, who had two serious brain surgeries at Mayo's.

Senator GRASSLEY. What about the fact that you brought up the point you did not get the chance to see your children very often?

Mr. HULTMAN. Well, and I do not mean with any personal pride or anything, but I am extremely busy. I am going a lot of the time. This was an occasion where I could spend some time with this youngest daughter. That was the reason that I did go. As I say, also, my wife indicated it was a good time, an excellent time, for me to have a checkup. So, it was because my daughter was going that I went and took advantage because my wife had made the thought and the suggestion that I take a physical exam, too.

Senator GRASSLEY. Mr. Hultman, it has been alleged that just prior to entering the Mayo Clinic you learned of the opportunity to reach the rank of brigadier general in the Army Reserve and that you were going to the hospital in order to determine your physical condition and what obstacles you might face, if any, in passing the required Army medical physical examination for that promotion.

Would you tell the committee when you first learned of the promotion possibility and why you entered Mayo Clinic at this time when you did?

Mr. HULTMAN. Senator, let me just make a comment before I directly answer the last part of the question. That is preposterous. That is absolutely preposterous, the allegation that is made there. And my daughter and my wife as well as the record would be the first ones to be here to attest to what I have said here.

With reference then to the direct question, I have gone back into my files and my records. My files will clearly show correspondence that sometime during the month of March of the year that you are now talking about, which would be 1974, that I first learned that there would be an opportunity for me and 25 or 30 other colonels who are in the area that, if the individual who was holding that assignment at that time were to cut his assignment short, he would

give all of these 25 or 30 colonels an opportunity to have a shot at being a brigadier general. And that was in the month of March. As I say, there is not any question that was in the month of March.

Let me comment further. I mean, for anybody to draw the preposterous conclusion that I would go to Mayo's to have a fine-tooth-comb research of a physical of me to escape the possibility of something rather than going to take a regular Army physical, as I say, it is preposterous. That is just absolutely preposterous. If you are going to go to Mayo's, the reason you go to Mayo's is because it is world renowned--that they look you over with a fine-tooth comb. If I were going to hide something, that is the last place that I would be going to go because you are not going to hide anything from them. They are going to find with a fine-tooth comb any condition that you may have or might not have.

Senator GRASSLEY. Only one person could make the brigadier general rank out of these 24; there was just one slot?

Mr. HULTMAN. Yes. There was just one single slot at that particular time. I do not know the exact number, but it was approximately 30. By this individual making a decision that he was going to step aside early, because he was still on and would continue on during this period of time, these approximately 30 colonels all equally would have a chance and an opportunity.

Senator GRASSLEY. Now I would like to have you tell the committee what transpired at the Mayo Clinic, what tests were conducted, and what diagnosis was made by the attending physicians.

Mr. HULTMAN. While there at Mayo's, I was at a hotel. I do not remember what the name of the hotel was, but it was right close, adjacent to the clinic. While my daughter was taking various examinations, I from that hotel room went to the various places in the clinic. They did a number, a series of tests on me as far as this physical exam.

I might indicate to you that, if you have never been to Mayo's, you go all over the place. I mean, it is a number of buildings and a number of wings. It is not one single building or one single wing. They send you all over the place. So, while I was there at Mayo's, I took these various tests and passed all of the tests, the examinations that they gave me while I was there.

Senator GRASSLEY. Mr. Short would like to follow up.

Mr. SHORT. What was the last statement, Mr. Hultman, that you passed all the tests that you took?

Mr. HULTMAN. Yes. I passed all of the tests.

Mr. SHORT. How are you aware of that?

Mr. HULTMAN. Pardon, sir?

Mr. SHORT. What makes you aware that you passed all of the tests?

Mr. HULTMAN. The reason I know that is because when I left they gave me a little slip of paper—it is the only report or medical report that I have ever seen up until the time of the IG inspection. It is the only report, medical that I have ever seen; and that report showed the results of a number of tests. On all of them I had passed them. They also indicated to me while I was there at Mayo's—and they examined me for a number of things, for elevated blood sugar, sugar in the urine, hearing, eyes, the fact that I had had a little urology problem. They examined me for all these

things and found that I had no problems with any of them. And that is how I know that I passed the tests, because they indicated it to me as well as giving me this little report.

Mr. SHORT. The report that you received, what did that actually reflect? Do you recall?

Mr. HULTMAN. Yes. It reflected that I had passed all of the tests that had to do with sugar in the urine and also that I had passed all of the tests that had to do with elevated blood sugar, which was the primary item that Dr. Waterberry back at Shoitz had indicated to me, that I had elevated blood sugar. And that was what I indicated, what I knew, what knowledge I had to Mayo's when I came to Mayo's.

Senator GRASSLEY. I would like to quote now from a review of the Mayo Clinic history records, which are now in the possession of the committee. It indicates, and I quote:

> The patient has been known to have diabetes since November, 1972, and this was found on a routine urinalysis. A positive glucose tolerance test was obtained at that time. No diabetic coma or insulin prescribed. Has used an 1800 calorie diabetic diet plus one gram of Orinase twice daily. And the blood sugars have been virtually within normal limits on those which we have on our records.
>
> The most recent blood sugar in August, 1973, was 108; normal, 70 to 110. Triglyceride levels have been elevated on each occasion when they have been checked, most recently 220; normal, 70 to 170. Has maintained present weight since a diet prescription. The patient was found to have prostatitis and urethritis November, 1972, and has received treatment of macrodantin on several occasions.

The next question, Mr. Hultman, is this. What do you recall telling the doctors at the Mayo clinic concerning your medical history? Did you in fact furnish the detailed history which I have just covered?

Mr. HULTMAN. Very briefly, I told them everything that I knew at that particular time. What that was—and maybe I did not mention this a moment ago; if I did not, I did not intend not to mention it because I have always indicated to anybody at any time what it was that I had learned back there at Shoitz and with Dr. Waterberry. And that is that I indicated to him that I had elevated blood sugar and that I had been put on a preventive care program. And what that program was was three things. I am not sure I mentioned all three of them a while ago; if I did not, I meant to. One, that I go on this diet. Two, that I go on this exercise, this physical exercise program. And, three, that I take this particular little pill that I took with my vitamins.

The very first thing that happened when I was there at Mayo's on the first day was they indicated to me that—and it was kind of ironic because that is what Dr. Waterberry had said to me—that I did not need to remain on this pill any longer.

I indicated to them at that particular time the information that I knew. I have since, during the IG investigation, for the very first time, saw what the doctors, the various people that I saw, wrote down in their report. The only report, you remember as I said a while ago in response to the question, was I had this one small report, was that there was a lot of detailed information. Well, that detailed information was information that had to come from the doctor. I mean, it was not information I would know.

Senator GRASSLEY. What you are saying is that Dr. Waterberry gave all the technical information to the other doctor because you did not know.

Mr. HULTMAN. I would not even know what a number of those items are. I would not know them, understand them, or anything else. But I told the doctors at Mayo exactly what I knew, and I told it to them very flat and straight out. And that was that I had the elevated blood sugar, that he had indicated to me that I was on the borderline, and he had given me this medicine. I was to go on the physical program and do those things. If I did those things, why, I was fine.

The CHAIRMAN [returning]. I would like the record to reflect that Dr. Donald Purnell was interviewed on March 5 of this year at the Mayo Clinic in Rochester and stated that he reviewed the medical records concerning Mr. Hultman, but he does not recall him personally. Dr. Purnell stated in part,

> When Mr. Hultman furnished the medical history to the clinic, he advised that he was diagnosed to have diabetes in November 1972, and that this condition was discovered on a routine urinalysis. At that time, he was also given a glucose tolerance test which yielded positive results concerning diabetes. At that time, he was put on an 1800 calorie diabetic diet and also medication with Orinase to control his diabetes.

Dr. Purnell stated that,

> Hultman's diabetic condition was so well controlled that it would not have been detectable during tests run by the Mayo Clinic if Mr. Hultman had not advised the clinic that he had in fact been previously diagnosed as having diabetes. The only way that he could have been diagnosed as having diabetes in January 1974 would be to remove him from any form of diabetic treatment including diet and medication and then give him a glucose tolerance test, which is a large dose of carbohydrates under a controlled condition. Even doing that, however, the tests are often inconclusive for a person of Hultman's age of 48 years.

Dr. Purnell goes on to say,

> Hultman displayed an excellent attitude and degree of care concerning his diabetic condition because he was treating it exactly as it should have been treated. It was a mild case of diabetes, in the first place. Hultman's treatment of a proper diet along with the medication prescribed by his personal physician was controlling it to the point it was not detectable from a medical point of view.

Dr. Purnell stated he did not diagnosis Mr. Hultman as having diabetes. He was aware of the condition only because Hultman had advised him of the previous diagnosis. The blood sugar test run on Mr. Hultman indicated that his blood sugar levels were at the higher limits of a normal range which is not unusual for a patient of Hultman's age.

Dr. Purnell recommended that, inasmuch as Mr. Hultman's case was so mild, Hultman should discontinue the use of Orinase and see how the diabetes would do using just dietary control.

That is the end of his statement.

Although Dr. Purnell does say that your diabetic condition was so well controlled that it would not have been detectable on tests run by Mayo, he does state that you advised him that you had previously been diagnosed as having diabetes; yet, you told the committee that you did not consider yourself to be a diabetic at that time. Would you clarify this matter for the committee?

Mr. HULTMAN. Yes, Mr. Chairman. I indicated to the doctors at Mayo exactly what I had been told and as exactly as I understood

it. I indicated to them that I had elevated high blood sugar. That is what had been indicated to me, that I was on the borderline. And, if I did certain things that were prescribed to me, I would not cross over that border.

Why I understood it in this particular way is that my mother was a diabetic. I know what a diabetic is. She was a woman who had to take insulin, who had to take a needle. She was a woman who was almost blind. She was a woman who could not do the things that you normally do. I had none of these symptoms of any kind. I indicated exactly to the doctor what I had been told. What I had been told was that I had elevated high blood sugar; if I did these things, then I was not going to cross over that borderline and be a diabetic like my mother.

Now, I do not know what the conclusions are that maybe medical men, like conclusions that we lawyers sometimes draw, as conclusions, but I know what the facts were that were indicated to me. I have indicated those not only to the Mayo Clinic but to anybody and everybody who has ever asked me those questions.

The one thing that I guess maybe concerns me the most and I react to as a diabetic is again the fact that my mother had to take insulin. I have seen her take insulin and the problems that come with that. I have never had that kind of a condition in any way.

The CHAIRMAN. The record should reflect that Dr. Purnell was reinterviewed on March 29, 1982, at which time he stated:

> When a person has a consistent high level of blood sugar, that person has diabetes. A consistent high blood sugar level can only be caused by diabetes. The use of the phrase high blood sugar level is a euphemism.

In the case of Mr. Hultman, Dr. Purnell would not have distinguished between the two terms, but Dr. Purnell is unable to recall the exact use of the word diabetes as opposed to high blood sugar level by Mr. Hultman.

Mr. Hultman, as a result of an anonymous letter dated February 4, 1980, addressed to General Meyer, U.S. Army Chief of Staff, the Army's Inspector General conducted an inquiry into the facts and circumstances surrounding the allegations that, when a colonel, you falsified your medical history form while undergoing your physical examination for promotion. It was alleged that during February and March of 1973 Hultman was hospitalized and treated locally and at the Mayo Clinic for a very serious attack of diabetes and associated complications and that this was particularly serious since Mr. Hultman had been involved in the prosecution of a number of National Guard enlisted men who had falsified their medical records.

Mr. Hultman, would you tell me exactly what role you played in the prosecution of the National Guard enlisted men?

Mr. HULTMAN. Yes; I would be pleased to, Senator. If I could just preface it, that allegation that I have had a very serious attack of diabetes and associated complications is just absolutely, totally untrue.

The CHAIRMAN. I believe I mentioned that this was an anonymous letter.

Mr. HULTMAN. That is correct, sir.

To answer your question directly, I think I have to do a little bit of explanation so that you will understand what my role was. At this time there was a Democrat U.S. attorney in the Southern District of Iowa and in the area where the capital and the legislature is located in Des Moines. Anything that had to do with criminality or criminal charges was the responsibility and was handled by that Democrat U.S. attorney in the Southern District of Iowa. That was not my role. What my role was——

The CHAIRMAN. Do you recall who that attorney was?

Mr. HULTMAN. It is a woman. Conlin, Roxanne Conlin. She was the one that handled anything that had to do with criminality or criminal offenses. That is what her responsibilities were.

So, that was strictly the U.S. attorney. I was not in the U.S. attorney's—I was a private lawyer.

The CHAIRMAN. You were not U.S. attorney then?

Mr. HULTMAN. No; I was in private practice.

The role that I played was a legislative committee—and it was a Democrat legislative committee, by the way, of a Democrat majority—had decided they were going to look into the fact that they felt they needed to revise the code of the State of Iowa and the regulations, as they have to do with the National Guard, and the events that you are now questioning me about. As a result, they decided that they needed counsel. I know you gentlemen have counsel to represent you on the committee. So, they went to the Iowa Bar Association. They asked the Iowa Bar Association to submit to them some nominees that they felt would be highly competent lawyers to advise that committee in their deliberations toward legislation. The bar association one day—in fact, it was Sunday; I remember I had just come back from teaching my Sunday school class, and I got this phone call that said would you be interested. And I said: Very frankly, to submit my name would be a waste of time for two reasons. One, I am a Republican, and I am a partisan Republican in the sense I have been the attorney general of Iowa, and so forth. And a Democrat committee was not going to ask me to be their counsel. Two, as a reservist, and this was a National Guard matter. For those reasons, I did not think that a committee would consider me.

They said: "Would you be willing to have your name submitted?" I said: "As a matter of public service, yes; I certainly would." They submitted my name along with, I do not know, two or three or four very competent lawyers. They interviewed us. The whole committee interviewed us and decided that I was the one they wanted to be as their counsel, this Democrat legislative committee.

What I did then, was my role and my job was to advise them—and as a former attorney general I was generally familiar with the code of the State of Iowa—during the course of their deliberations and their hearings and so forth. That is what my role was. In fact, I can say to you that, as I best recall, the only conversation that I ever had with the U.S. attorney was a matter concerning a wire tap came up in the course of this deliberation by this legislative committee. The U.S. attorney and I had some deliberation about that wire tap matter. But that was my role, the role had to do with anything of criminal prosecutions—in fact, I remember very clearly that in the course of the various deliberations of the Democrat

committee one of the—I would not want to call it a problem—but one of the things that I constantly had to do was to indicate to them that their role was not that of the criminal role. In other words, their role had to do with legislation. In order to protect individual rights it was very critical that they not go beyond that role. The criminal role was over here with the U.S. attorney.

What I am saying to you is that that is an abominable allegation. It is totally untrue.

The CHAIRMAN. You only conferred with the U.S. attorney on one criminal matter?

Mr. HULTMAN. That is right. What it was was a matter of wiretap. That discussion was only with reference to what information this Democrat committee had come up with to furnish her with that information. But I had nothing to do with the criminal issue that was involved. That was all the U.S. attorney.

The CHAIRMAN. In this regard, I received a letter from Mr. Richard Turner, the U.S. attorney for the Southern District of Iowa, which states in part:

> In the fall of 1978 and early 1979, the FBI reviewed the applications of 2,000 or 3,000 members of the Iowa National Guard for membership in that service and referred approximately 119 of said applications to this office because it appeared that these guardsmen had made false statements with reference to their arrests or convictions for felonies or misdemeanors. * * *
>
> None of these guardsmen were prosecuted for failing to disclose or for making a false statement pertaining to their physical condition, medical history, or anything other than their criminal records.
>
> Mr. Hultman had nothing to do with any of these prosecutions. Not only did he reside in the Northern District of Iowa, but he was not in office at the time.

This letter, without objection, will be placed in the record in its entirety.

[Material referred to follows:].

U.S. Department of Justice

United States Attorney
Southern District of Iowa

122 United States Courthouse
Des Moines, Iowa 50309

515/284-4400
FTS/862-4400

APR 15 1982

April 12, 1982

Honorable Senator Strom Thurmond
Chief, Senate Judiciary Committee
United States Senate
Washington, D.C. 20530

ATTN: Mr. Bill Christensen
Investigator

RE: Evan Hultman
Candidate for United States Attorney
Northern District of Iowa

Dear Senator Thurmond:

In the Fall of 1978 and early 1979, the FBI reviewed the applications of two or three thousand members of the Iowa National Guard for membership in that service and referred approximately 119 of said applications to this office because it appeared that these guardsmen had made false statements with reference to their arrests or convictions for felonies or misdemeanors.

Of the approximately 119 cases referred, 90 of the guardsmen were prosecuted, convicted and fined in amounts varying from $50 to $100, upon their pleas of guilty to one or more violations of Title 18, U.S.C. §1018, a misdemeanor. One such person, who was convicted of twelve counts of aiding and abetting others in such violations, was fined $1,200. Some had not only been convicted, but had served time for felonies they did not disclose in their applications. In some cases, the defendants might have properly been charged with and convicted of a violation of Title 18, §1001, a felony. Twenty-nine prosecutions were declined, dismissed or no bills were returned by the Grand Jury.

None of these guardsmen were prosecuted for failing to disclose, or for making a false statement pertaining to, their physical condition, medical history or anything other than than their criminal records.

Mr. Hultman had nothing to do with any of these prosecutions. Not only did he reside in the Northern District of Iowa, but he was not in office at the time.

My conclusions with regard to the above information are derived from my telephone inquiries to Mrs. Roxanne Conlin, the then United States Attorney for this District who prosecuted these cases, and to Mr. L. Joseph Hersley, the FBI agent in charge of these investigations. I was also assisted by the secretary in this office who handled the paperwork and filing. A list of the guardsmen and a press release issued September 5, 1978, explaining the prosecutions are enclosed.

If I may be of further help in this matter, please do not hesitate to call upon me.

Sincerely,

Richard C. Turner

The CHAIRMAN. I would also like at this time to quote from a press briefing issued on September 5, 1978, by then U.S. attorney Mrs. Roxanne Conlin. The statement reads in part:

> Recruits who have falsified their enlistment document by failing to reveal past criminal arrests and/or convictions; or by failing to acknowledge prior military service and/or rank and/or discharge conditions will be permitted to enter written pleas of guilty to Title 18 United States Code section 1018 * * *.
>
> There are serious criminal records among those who have been charged including grand theft, burglary, assaults and threats against the President; but the majority of the criminal records are of a minor nature.

From my examination of these documents, it appears that all of the National Guard enlisted men who were prosecuted were involved in prior criminal activities and failed to disclose this on the forms utilized for enlistment purposes.

Without objection, I will place these documents in the record at this time. This paper contains a list of all the National Guard cases.

[Material referred to follows:].

September 5, 1978

PRESS BRIEFING

This statement is issued for the purpose of clarifying the matter of fraudulent enlistments in the Iowa National Guard and explaining how I intend to process the cases currently pending in this office.

The forms utilized for enlistment purposes include instructions at the top of the form, one of which is as follows:

"Making a knowing and willful false statement on this application can be punished by fine or imprisonment or both under Section 1001 of Title 18, U.S.C."

The forms also require the applicant to indicate prior military service, rank upon discharge, and reason for discharge.

Recruits are asked the following types of questions concerning prior contact with law enforcement authorities:

"Have you ever been arrested, charged, cited, or held by Federal, State, or other law enforcement or juvenile authorities, regardless of whether the citation, or charge was dropped or dismissed or you were found not guilty?

As a result of being arrested, charged, cited, or held by law enforcement or juvenile authorities, have you ever been convicted, fined by or forfeited bond to a Federal, State, or other judicial authority or been adjudicated a youthful offender or juvenile delinquent (regardless of whether the record in your case has been "sealed" or otherwise stricken by the Court)?

Have you ever been detained, held in or served time in, any jail or prison, or reform or industrial school or any juvenile facility or institution under the jurisdiction of any city, county, state, Federal or foreign country?

Have you ever been awarded, or are you now under suspended sentence, parole or probation or awaiting any action on charges against you?

Recruits are warned that their statements may be checked by the FBI. At the end of the form the certification signed by each recruit provides as follows:

I understand that the Armed Forces representative who accepts my enlistment does so in reliance on the information provided by me in this document; that if any of the information is knowingly false or incorrect, I may be prosecuted under Federal, civilian or military law or subject to administrative separation proceedings and, in either instance, I may receive a less than honorable discharge which could affect my future employment opportunities. I certify that the information given by me in this document is true, complete, and correct to the best of my knowledge and belief.

After much deliberation and discussion with the United States Magistrate, Ronald D. Longstaff, I have decided to handle violations of law concerning false statements with respect to recruiting, which were voluntarily brought to our attention as follows:

Recruits who have falsified their enlistment document by failing to reveal past criminal arrests and/or convictions; or by failing to acknowledge prior military service and/or rank and/or discharge conditions will be permitted to enter written pleas of guilty to Title 18 United States Code Section 1018 which provides:

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> Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than $500.00 or imprisoned not more than one year, or both.

If they do so, I will recommend, and United States Magistrate Longstaff has agreed to impose a fine of $50.00.

The written plea format for recruits was adopted in order to conserve the resources of the Courts, this office, and the defendants. However, as the plea form clearly indicates, any person who desires to appear, may do so.

Recruiters who participated in or counseled false enlistments in violation of Title 18 United States Code Section 1018 and who voluntarily acknowledged their actions will be charged by information with each such enlistment as a separate count in the information. They will be required to appear before Magistrate Longstaff and if they are found guilty, will be fined $100.00 and receive a 30 day suspended sentence for each count.

I have today processed a total of 42 recruits for these violations. General Burkhead provided me on Friday with materials involving 50 separate individuals. Fifty-five individuals were discovered in the initial FBI investigation of which I have received 32 files. There were several duplicate files. The remaining personnel have not been charged for one of the following reasons:

1. The enlistment occurred prior to January 1, 1976.

2. The criminal record of the individual involved only minor traffic offenses.

3. The criminal record of the individual included only one misdemeanor which occurred more than ten years prior to enlistment.

There are serious criminal records among those who have been charged including grand theft, burglary, assaults, and threats against the President, but the majority of the criminal records are of a minor nature.

The names of persons who have been processed today will be unavailable until they return their pleas or if they chose not to do so, upon filing of the information with the Court. The investigation will now continue.

Any violation of this nature which occurs in the future will result in a recommendation by this office of a term of imprisonment.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,	)	
	)	CRIMINAL NO. _____
Plaintiff,	)	
	)	
V.	)	INFORMATION
	)	(T. 18 U.S.C. 1018)
	)	
Defendant.	)	

THE UNITED STATES ATTORNEY CHARGES:

COUNT 1

That on or about _____ in _____ in the Southern District of Iowa, _____ being a person authorized by the laws of the United States to give a writing in the form of _____ knowingly made and delivered as true, the said _____ writing containing a statement which he knew to be false, and punishment for so doing is not elsewhere expressly provided by law.

This is in violation of T. 18 U.S.C. Section 1018.

_____
UNITED STATES ATTORNEY

DEFENDANT'S WRITTEN PLEA OF GUILTY AND CONSENT
TO IMPOSITION OF SENTENCE IN MY ABSENCE
BY A UNITED STATES MAGISTRATE

I, _____, having received a copy of the Information against me on _____, 1978 consisting of one count, understand the nature of the charges against me and voluntarily and of my own free will enter a plea of guilty to Count One. I understand that the maximum penalty that could be imposed for violation of Title 18, United States Code, Section 1018 is a fine of not more than $500 or imprisonment for not more than one year. No member of the United States Attorney's Office, nor any officer of the Court, nor any person has used any force or violence, any form of duress, coercion, or undue influence, promised me that my sentence would be any less or that I would receive any special consideration, nor have I been made any other promises which would cause or induce me to enter the plea of guilty that I have just entered. I am guilty of and in fact did commit the offense stated in Count One of the Information.

I understand that should I go to trial, certain Constitutional rights would be afforded me and that these rights include: the Government would have the burden of proof beyond a reasonable doubt to convince a jury of my peers that I am guilty by bringing forth legally admissible evidence in the form of witnesses and documents; I may take the witness stand but I need not do so and if I chose not to do so, neither the Government nor the Court may comment upon that fact; I may compel witnesses to testify by the use of subpoena; if statements were made by me in response to questions by law enforcement officials without my being advised of my right not to be a witness against myself, those statements could not be used against me in Court; and if documentary evidence were obtained in an illegal fashion, that evidence could not be used against me at trial. I also understand that by pleading guilty and not going to trial, I am waiving those Constitutional rights.

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I am not now under the influence of drugs and I have no physical or mental impairments which would make it difficult for me to understand the nature of these proceedings or what I am now doing.

I hereby give my written consent that all proceedings in this case be concluded in my absence under Federal Rule of Criminal Procedure 43. Furthermore, having been fully apprised of my right to elect to be tried by a jury before a United States District Court Judge which has jurisdiction of the offenses and of the consequences of this consent, I hereby consent to be prosecuted before Ronald E. Longstaff, United States Magistrate for the Southern District of Iowa, for the minor offense charged in Count One of the Information, as authorized by Title 18, United States Code, Section 3401. I also hereby waive time for sentencing and of my right to a pre-sentence report by the United States Probation Office.

I understand that the United States Attorney has recommended that a fine be imposed in the amount of ~~$35.00~~ $50.00. I also understand that the United States Magistrate, Ronald E. Longstaff, has agreed that this will be the punishment assessed. By pleading guilty, I understand that I will be fined a total of $35.00.

_____

DEFENDANT

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90 convicted of 28 - Declined, Dismissed or No Bill
- misdemeanors

NATIONAL GUARD CASES (All cases prosecuted except as noted)

ABBAS, Kevin Wayne (Declined)
ALTES, Donald Paul
ANDERSON, Michael C.
ANDERSON, William R.
ARNOLD, Dean O. (Dismissed)
ASWEGAN, Michael Ray
BARTA, William Joseph
BICKAL, Gordon Louis
BINGAMEN, Raynerd Douglas
BLACK Harry
BLOUGH, Rollin Duane (Declined)
BORCHERT, Floyd Duane
BORMANN, Kenneth John
BRADFORD, Edward Kerry
BROOKS, Benjamin Thomas
BUDDI, Michael Benjamin
BURNS, William Carl
BUTTERFIELD, Randy Thomas
CARTER, Robert Eugene
CHENEY, Lowell Wesley
CHESMORE, Elizabeth Matilda
CONRAD, Melvin Charles
CORTESIO, Rickey Alan
COTTO, Johnnie
DARLING, Michael Max
DAVIDSON, Randy Kayo
DAVIS, Michael Lee (No Bill)
DAWKINS, Joseph Martin
DEMPEWOLF, Robert Joseph
DEVILBISS, Gary Ray
DEVOOGD, James Laverne (Dismissed)
DYER, Ronald Lynn (Dismissed)
ERPELDING, Thomas George
FALLIS, Jessie Eugene
FINTEL, James Dean
FISHER, Barry Milton
FLICK, Danny Earl
FOX, Billy Cebert (Dismissed)
FREDINBURG, Don E.
FRENCH, Larry R.
GARDNER, Bruce A.
GARRINGER, Lonnie Lee (Dismissed)
GRONEWOLD, James Peter
GRUNDON, John Carl
GUMP, Robert Henry
HALBLOM, Neal Edward
HANSON, Rodney Myron
HAWKINS, Floyd L.
HELMER, Lonnie Allen
HENDERSON, Kenneth W. (Dismissed)
HOLMGREN, Mithcell Dean
HOOD, John Daniel
HOUGHTALING, Thad Warner
HUPP, Marty Ann
HURLEY, Ronald Wayne
JAMES, Dale Lynn (No Bill)
JONES, Ruth Ann
JONES, Walter R.
KELLOGG, Lawrence Lee
KENWARD, Harley J.
KILBURG, James M. (Dismissed)
LAMB, Norman Dale
LANTZ, Marshall S.
LARSEN, Martha (Declined)
LOGAN, William Lester
LUMSDON, Charles Edward
MALONE, James J.
MARTIN, James
MARTIN, Lavern Arthur
McGEE, John Bernhard
McDONALD, James A.
McMULLIN, Kevin Linn (No Bill)
MILLER, Kenneth G.
MORELAND, James Martin (Declined)
MORRIS, Virgil David
MYERS, David Eugene (Dismissed)
ORNGARD, Paul Erick
PEACHEE, Lewis Harry
PELICAN, David Dennis (Dismissed)
PERRY, Randall Carl
PITTS, Thomas Joseph
POTHOF, Elmer E.
PUNKE, Karl Edward
RANDALL, Steven Lane
REEDHOLM, Robert Carl (No Bill)
RICHARDS, Alan Craig (Declined)
RICHARDS, Alan C.
RIFE, Clyde Mansel (No Bill)
RITCHIE, Jeannette Elaine (Dismissed)
ROACH, Terry Wesley
RUNYAN, Douglas Lee
SALAZAR, Joseph Ylario
SANDLER, Mark Alan (Declined)
SANKEY, Roger Eugene
SCHMIDT, Angelo Anthony (Dismissed)
SHAFFER, Gary Daniel
SHOUSE, James D.
SILKETT, Matthew J.
SIMPSON, Charles William (Dismissed)
SOLSAA, Randy Lee
TERRELL, Wendell Lee
TIFFANY, Marvin
TYNES, Wilbert Lee
VELDHUIZEN, John Harlan
WALTERS, Robert Stephen (No Bill)
WEDEKING, Douglas G.
WENDT, Ronald Lee (Dismissed)
WHETSTONE, Walter Eugene (Declined)
WHITE, Kevin Ray
WILLARD, Brady James
WOLFGRAM, Louis Edward (Dismissed)
WORL, David Lee, Jr.
WRIGHT, Larry James
YOUNG, George Arthur (Dismissed)
ZANKER, Daryl Eugene

JONES, DONALD LOUIS
STEPP, Steven Oliver

BROWN, KENNETH ARTHUR

ARRIAGA, MIGUEL RAYMOND (Dismissed)

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The CHAIRMAN. Mr. Hultman, records in custody of the committee indicate that the final Inspector General's report on the investigation was furnished to the Vice Chief of Staff on June 24, 1980, and reflects in part that:

> Hultman testified that the first time he was aware that a physician had diagnosed that he had diabetes and sugar in his urine was upon reading the Mayo Clinic's reports provided to him during this inquiry. He stated he was sure he was never told he had diabetes because I would have remembered that because I would not have believed it.

I believe, Mr. Hultman, that the conclusion drawn by the Army Inspector General is not totally accurate. Rather than saying that you were sure you were not told you had diabetes—and I stress the word diabetes here—your actual quote according to the May 20, 1980, transcript of that interview was, and I quote, "I think I would recall if somebody had said to me: Hultman, you are this or you are that or something else because I would have reacted because, in the first place, I don't think I would have believed him."

Mr. Hultman, would you care to comment on this minor discrepancy and, further, on the conclusion that at this interview in 1980 was the first time you learned that you had previously experienced glycosuria?

Mr. HULTMAN. Yes. Again, to first preface my remark before I respond, Senator, I also wanted to indicate there was another error in that conclusion that I found, again, I am sure, the same as there have been some errors in some of these reports, as I have now seen them and looked at them. For example, on page 2 of that transcript you just referred to—and I do not indicate this in anyway with malice or anything else; there are sometimes some misstatements or accidental comparisons. On page 2, I notice that the report says during testimony Major General Hultman stated that in November of 1972 he had been involved in an automobile accident.

Well, clearly, the transcript shows that that was not the time. In fact, I tried to do some correcting of the transcript as we went along at that time.

To get directly then to your question, if the doctor did diagnose it, I was not aware of it. I was not aware of it until that particular time.

If the doctor made such a diagnosis—and eventually he did, and that is what I read in that report at the time I am looking at it, the Mayo report, during the IG investigation, then he did not indicate it to me. What has been indicated to me—and I have never denied it; I have been very open about it—is that I had elevated blood sugar. I have pointed that out on every occasion. I was told that I had elevated blood sugar. I was told that I was asymptomatic; I did not have any of these symptoms of any kind that had to do with being a diabetic.

The word diabetic and the concept to me is exactly what my mother was, and that is what a diabetic has always been to me and meant to me. If a doctor would have said to me, you are a diabetic, I probably would have had an argument with him at the time. I did not have any of the symptoms that my mother had. I did not have to take insulin. I had no adverse things affecting me. My eyes, all the tests have always showed that my eyes have been absolutely perfect, no problems of any kind; not just in terms of seeing but in

terms of nothing in terms of any adverse effect. I had none of these normal symptoms that the doctors talked to me about.

What I am saying, I guess, to you and to the members of this committee is that I guess a comparison I could make would be this. I was having some troubles at that time with my neck back when I went into Shoitz. It was a sore neck. I told the doctor about it at the time. Again, I was about to make this insurance settlement. If I had something serious, I wanted to know about it. But, if I would have told him at that time that, as I did, I had a sore neck and he wrote down in his report he has arthritis but does not tell me that I have got arthritis and then at Mayo I am asked the same question, I am going to tell that doctor the same thing: I have still got a sore neck.

And that is exactly what had transpired. If I was a diabetic in their sense of the word in their conclusions, then that is their conclusion. It was not what was told to me at the time. I was told that I had elevated blood sugar, and there is not any question about that.

I have always stated what I knew and what I was told.

The CHAIRMAN. In 1980 was the first time you learned that you had glycosuria?

Mr. HULTMAN. That is exactly right, sir, when I read that report. In fact, when the IG people discussed it with me, I made it very clear that that was the first time. I had never seen any reports, Senator. Up until that time the only report that I had ever seen concerning anything concerning me medically was this little report that I got when I left Mayo's that they gave me that said I passed all the tests. Those included all the blood and sugar tests.

The CHAIRMAN. The report of the Inspector General goes on to say: "In the opinion of the medical expert and the investigators, Hultman's medical records were not knowingly falsified. Any irregularities on the forms were minor in nature and had nothing to do with the blood sugar findings."

Colonel Helsel concluded from the Mayo Clinic medical records that Hultman has uncomplicated diabetes mellitus. The conclusions then reached by the Army were as follows: A, Hultman did not knowingly provide false and incomplete medical information during his 1974, 1976, and 1978 medical examinations. B, Hultman was not treated at the Mayo Clinic for a very serious attack of diabetes. However, his diabetic condition was documented by the Mayo Clinic in 1974. C, Hultman has uncomplicated adult-onset diabetes mellitus, based on the Mayo Clinic medical records.

It should be noted at this point that on March 5 of this year Maj. Henry Reed, one of the Inspector General's investigators involved in the 1980 Hultman investigation, stated that the Army was unable to locate Hultman's 1974 and 1976 physical examination records. They were also unable to obtain a copy of his report from Mayo Clinic. Hultman completely cooperated with the Inspector General's office and provided his personal copies of the 1974 and 1976 physical examinations and also personally requested the Mayo Clinic to furnish their report to the Army.

Major Reed said: "What this amounted to was the subject of the investigation provided us with the key evidence we needed. If he

was trying to hide anything, then why would he have provided us with this type of information?"

Major Reed went on to say that, even if the applicant had known he did have diabetes and even if he had listed it as positive on his medical exam, it would not have prevented his promotion to brigadier general.

The Surgeon General's office had advised him that, if Hultman did have diabetes, he simply would have been classified as P3; and this would not have affected his promotion in any way. Major Reed said that the P3 classification would indicate that Hultman's diabetes is controllable by diet and medication.

General Hultman, I will not at this time attempt to go through the entire investigation conducted by the Army. I do, however, have several questions pertaining to the Army medical records that I would like to clarify.

First, General Hultman, would you tell the committee why you answered no to question number 20 on Army medical history, standard form 93, which reads: Have you ever had any illness or injury other than those already noted?

Mr. HULTMAN. Yes. In my judgment, I had never had anything significant. I responded accordingly. My understanding in answering these questions down through the years is that this question and the one then that follows is based upon whether you have had an injury or an illness which is something other than minor and would deny you of the capability to do your job in the Army.

When you have been as physically active as I have as an athlete, including football, track, and boxing in the Army, you have had a long record of minor injuries and illnesses. But they have always been minor to me, and that is, as I understand, what that item is getting at.

The CHAIRMAN. Question 21 on this same form states: Have you consulted or been treated by clinics, physicians, healers, or other practitioners within the past 5 years for other than minor illnesses? Again, Mr. Hultman, you answered no on this question. Would you please give your reason for that?

Mr. HULTMAN. Yes. That particular question refers to, as I understand it, to have consulted and refers specifically to the separation of what is serious and what is minor. And I have had a number of minor matters. In fact, during that year of 1972 I had a number of minor matters following that car accident. It had to do with the things that I went into the doctor's, the dentist, the urologist, and so forth. And those things are all minor, as far as I was concerned then and are minor to me sitting here today.

In fact, the only thing through all these physical exams down through the years that I have referred to that I felt was major was when I was a patient. That means that as a patient I went into the hospital because I had a condition that was a hernia. It hurt me. It bothered me. It incapacitated me. It did not let me do the things that I normally do. And that was major. But that is the only thing that I have ever considered to be major.

And that is what I interpret 21 to mean because in fact——

The CHAIRMAN. Was that reported on the Army record, the hernia?

Mr. HULTMAN. Pardon, sir?

The CHAIRMAN. The hernia.

Mr. HULTMAN. Yes.

The CHAIRMAN. You did report that?

Mr. HULTMAN. Yes. I have reported that item every time on every physical exam I have had. And that is the only item I have ever indicated all through the years. And the reason is because that is the only thing serious, in my judgment, that I have ever had.

The CHAIRMAN. I am informed that a review of the records shows that you did report that.

Mr. HULTMAN. Yes, I have in every instance, sir.

The CHAIRMAN. Army records indicate that on May 21, 1974, you were given a medical exam at the Andrew Rader Army Clinic, Fort Myer, Va., The laboratory report shows that all tests, including urinalysis, were within normal limits with the exception of the blood sugar test. The glucose level was approximately 160 milligrams. However, a notation on the form reflects: Patient ate breakfast.

Mr. Hultman, were you aware of this high blood sugar level at that time? What action, if any, did you take as a result of this test?

Mr. HULTMAN. No. I was not aware at all until during the course of this IG investigation. That matter was brought to my attention by the Inspector General. I did not even know what he was referring to at the time. He pointed out to me in the report that there had been a blood test taken, evidently for a number of things. That was indicated on the report at that time. But that is the very first time that I had ever heard anything concerning that particular matter.

The CHAIRMAN. General Hultman, Army records further indicate that in November of 1978 the Army physical examination reflected a positive test for sugar in the urine. What were you told concerning this report? Were you retested at that time?

Mr. HULTMAN. Yes. I was in the process of taking a physical along with a number of other soldiers. Routinely in the group and somewhere in the course of that physical it was indicated to me by one of the doctors that there had been a urine test in which there had been a finding of sugar in the urine. Some time later in the course of that day, maybe 3 or 4 hours later, I do not recall the exact time, a retest was taken. That retest showed that I was OK.

It was also indicated to me at that time by one of the doctors that this was a matter that I ought to indicate to the family physician.

That is the first time, to my knowledge, Senator, the very first time that I ever knew that I had sugar in the urine.

The CHAIRMAN. This is the first time you were told that you had sugar in the urine in 1978?

Mr. HULTMAN. That is exactly right. And that was the last Army physical that I had taken.

The CHAIRMAN. I do not think that I have any more questions at this time. Do you have anything further that you would like to add for the record?

Mr. HULTMAN. Senator, I wish to thank you and Senator Grassley and all the members of this committee for this opportunity to appear.

Early this morning as I jogged at the foot of the Capitol and the U.S. Senate, I thought back as a boy to my lifetime goals to serve. There were two. There have always been two. Interestingly, they have never changed. One was to serve that justice be insured, and I could do that, and it was a boyhood dream, as a district attorney. Two was to serve that good laws would be made for the good of all.

The second of those boyhood goals is still a dream. But the first of those, a prosecuting attorney dedicated to insure justice has consumed almost half of my adult life, first at the city level and at the county level as a prosecutor and at my State as an attorney general and as a U.S. attorney. Three Presidents now have sent my name to this Senate. The previous two occasions gave me the opportunity to work hard, to work very hard for justice, and have more than fulfilled my boyhood dream.

The driving force in all of this, in all of my decisions at every time and every occasion has been the protection of individual rights, the innocent first and foremost, as well as to see that justice is done.

In carrying out my responsibilities, there have been many times when I have had to say no, no on countless occasions to those who, in my judgment, were seeking to destroy others and their rights while in the pursuit of their own selfish, private, personal interests. The easy way on those times and those occasions is always to say: Yes; so what; what difference is it really going to make. But it is far more difficult for a prosecutor to say no in such circumstances than to buckle under the pressures of a Nard and his flagrant disregard of principles of justice that I have tried and I have fought for and have used every energy all of my life to uphold.

Today I want to thank you. I want to thank all the members of this committee for giving me an opportunity, an opportunity to answer your questions but also the opportunity to confront the poisonous pen, my accuser, the anonymous letter, in an open forum. For this, Senator, I shall forever be thankful.

The CHAIRMAN. Senator Grassley, do you have any other questions that you wish to propound to General Hultman?

Senator GRASSLEY. No, I do not. But I would like once again to thank you, Mr. Chairman, for the kind attention you have given this matter. I know the time it has taken of you and your staff. I am sure I speak for the people of Iowa for the fact that we have had an opportunity to lay out on the record an answer to all the accusations that have been made against Mr. Hultman. Thank you.

The CHAIRMAN. General Hultman, you can have a seat back there now. We are going to ask a doctor to come up and testify.

Mr. HULTMAN. Thank you, sir.

The CHAIRMAN. Our next witness is Dr. Dorothy Rasinski. Would you please come and take the table?

Please raise your hand and be sworn.

The evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. RASINSKI. Yes.

TESTIMONY OF DOROTHY RASINSKI, M.D., SPECIAL ASSISTANT TO ACMD FOR PROFESSIONAL AFFAIRS, LIAISON TO GENERAL COUNSEL, VETERANS' ADMINISTRATION

The CHAIRMAN. Dr. Rasinski, you are an endocrinologist and special assistant to the Assistant Chief Medical Director for Professional Services for the Veterans' Administration.

Dr. RASINSKI. That is correct.

The CHAIRMAN. Would you tell us about your medical training and qualifications?

Dr. RASINSKI. I graduated from undergraduate school at Cornell University. I took my medical degree from the University of Buffalo. I had my internship at Boston City Hospital. I took 3 years of internal medicine residency and fellowship in endocrinology and diabetes at Barnes Hospital-Washington University Medical Center in St. Louis, followed by a fellowship in diabetes at the Joslin Clinic in Boston.

The CHAIRMAN. I have a résumé here about you. Without objection, we will place that in the record at this point.

[Material referred to follows:].

RÉSUMÉ OF DOROTHY RASINSKI, M.D., J.D., FCLM, SPECIAL ASSISTANT TO ACMD FOR PROFESSIONAL AFFAIRS, LIAISON TO GENERAL COUNSEL, VETERANS' ADMINISTRATION

Cornell University (A.B. 1949; LL.B. 1951, converted to J.D.). Attorney, Office of the Chief Counsel, Office of Price Stabilization, 1952–1953. Attorney, Office of the Chief Counsel, Internal Revenue Service, 1953–1955.

University of Buffalo (M.D. 1959). Practiced law part-time while in medical school. Internship, Boston City Hospital, 1959–1960. Residency in Internal Medicine with Fellowship in Endocrinology and Metabolism, Barnes Hospital-Washington University School of Medicine, St. Louis, 1960–1963. Visiting Fellow in Diabetes, Joslin Clinic, Boston, 1963. Board certification in Internal Medicine. Private group practice in Internal Medicine and Endocrinology, Fullerton, California, 1963–1972. Medical Malpractice screening for the California Medical Association, 1963–1972.

"Sabbatical year" 1972–1973, including extensive foreign travel, volunteer work at the Jicarilla Apache Reservation in New Mexico, and post-graduate study at the University of Sourthern California Medical School.

Returned to federal government service in 1974 as Medico-Legal Officer, Armed Forces Institute of Pathology, primarily in medical malpractice screening and review for federal government agencies and assisting Department of Justice in defense of personal injury and medical malpractice litigation. Conducted seminars and symposia for physicians and attorneys on medical malpractice and risk management. Assistant Chief, Legal Medicine Division, AFIP, 1977–1978.

Joined Veterans Administration, Office of Medical-Legal Affairs, in 1978. Extensive writing and lecturing on medical-legal topics. Preparation of policy memoranda and position papers on proposed legislation, regulations, and issues of medical-legal significance. Currently serving as Liaison between Department of Medicine and Surgery and the General Counsel.

Teach Legal Medicine at George Washington University Medical School and Uniformed Services University of Health Sciences; teach in the Department of Medicine (Diabetes), Georgetown Medical School.

Member, Board of Governors, American College of Legal Medicine; Deputy Editor, Legal Aspects of Medical Practice; Vice-Chairman, Subcommittee on Drivers, National Committee for Uniform Traffic Laws and Ordinances; American Society of Internal Medicine, Task Force on Professional Liability Insurance; VA Liaison to President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavorial Research; and VA Liaison to National Diabetes Advisory Board.

The CHAIRMAN. Dr. Rasinski, what exactly is the medical definition of diabetes mellitus?

Dr. RASINSKI. Diabetes mellitus is a biochemical abnormality resulting from the fact that the body is unable to handle a load of glucose either because of total inadequacy of the pancreas to put

out appropriate amounts of insulin or that the insulin manufactured is not effective peripherally. As a result, the blood sugar is elevated and in severe cases may spill over and show in the urine.

The CHAIRMAN. Dr. Rasinski, as I understand it, there are situations where a single elevated blood sugar level would not be indicative of diabetes mellitus. Is that correct?

Dr. RASINSKI. That is correct, yes.

The CHAIRMAN. It could be caused by such conditions as stress, trauma, and so forth?

Dr. RASINSKI. That is correct, or taking certain medications, also.

The CHAIRMAN. Is this an accurate statement, and what is the medical reason for this type of problem?

Dr. RASINSKI. There is no such thing as a totally stable blood sugar. In normal individuals, after they eat a meal or take in a load of glucose, the blood sugar will rise in response to the intake of sugar or glucose. Then, as the pancreas puts out an appropriate amount of insulin, the blood sugar will drop back down to normal range again. So, a blood sugar level which in the fasting state would be totally unacceptable as being high, in the postprandial state, or after eating a meal, would be perfectly normal and not unusual at all.

The CHAIRMAN. Dr. Rasinski, are there times when an individual can have glycosuria or sugar in the urine and not be considered a diabetic?

Dr. RASINSKI. Yes. Any time the blood sugar is elevated either because of temporary stress or in someone taking certain medications and in certain other metabolic conditions sugar can appear in the urine even though an individual does not have diabetes. Perhaps the most significant of these is a condition called renal glycosuria, where the urinary threshold—beyond a certain blood sugar level where sugar spills in the urine—is particularly low. In other words, in the normal individual you do not start spilling sugar in the urine until your blood sugar is over 180 milligrams percent. With somebody who has renal glycosuria he can spill with a blood sugar of 50, 60, or 70 milligrams percent.

The CHAIRMAN. For instance, would an automobile accident cause this trouble?

Dr. RASINSKI. In a particular individual, depending upon the amount of stress associated with it, whether or not there has been a head injury associated, you can spill sugar temporarily in your urine after the accident, yes.

The CHAIRMAN. That would be a temporary situation?

Dr. RASINSKI. Yes, sir.

The CHAIRMAN. Dr. Rasinski, would you differentiate between clinical diabetes, chemical diabetes, and renal glycosuria?

Dr. RASINSKI. Clinical diabetes is the situation which exists when individuals portray that group of symptoms or syndrome which everyone accepts as being characteristic of diabetes. There is excessive appetite. There is excessive thirst, excessive urination, having to get up many times at night to go to the bathroom to urinate. All of this is in the face of a profound weight loss. These individuals normally for control have to take insulin or one of the oral agents which is administered to control elevated blood sugar or diabetes.

Chemical diabetes mellitus is that clinical situation which exists when individuals have a blood sugar either in a fasting state or after a meal which is beyond those limits which we accept as normal currently by our current definitions of diabetes. Therefore, the biochemical abnormality can be elicited on the basis of blood tests although the individual may be totally asymptomatic and he is unaware of the fact that he does manifest this biochemical abnormality.

Renal glycosuria, on the other hand, is a condition primarily of the kidney, where the individual will spill sugar in the urine even though the blood sugar itself may be totally normal.

The CHAIRMAN. You are not being concerned with diabetes insipidus?

Dr. RASINSKI. No; diabetes insipidus is something entirely different and is related to a disease of the posterior pituitary. It has no relationship to sugar in the urine whatever.

The CHAIRMAN. Dr. Rasinski, as I understand it, the procedures used for diagnosing diabetes in 1972 remain basically the same. However, the guidelines or criteria that the medical professional accepts as the established biochemical limits are much better defined at this time. Does age play a part in this determination and what are the requirements for determining biochemically that an individual has diabetes?

Dr. RASINSKI. To answer your first question, Senator, yes, age indeed does play a role. We have determined that, from about the age of 55 or 60 on, the body has an increasing inability to handle a sugar load. Therefore, a blood sugar which might be totally abnormal for somebody 35 or 40 years of age might be perfectly acceptable in somebody who is 75 or 80 and not diagnostic of diabetes in that age group while it would be diagnostic of diabetes in the younger group.

To answer the second part of your question, our criteria are much stricter now. We apply different criteria, depending on which school of thought you belong to, perhaps the most rigid treaters of diabetes consider any fasting blood sugar over 120 in somebody under age 50 and a blood sugar 1 hour after a meal over 180 and a blood sugar after 2 hours after a meal over 120 as being diagnostic of diabetes.

There are others, on the other hand, well-recognized specialists and authorities in the area of diabetes, who are much less rigid in their criteria and require several fasting blood sugars in excess of 140 or 2 of the blood sugars in a glucose tolerance test either at 2 or 3 hours in excess of 200 milligrams percent before they will characterize a patient as having biochemical evidence of diabetes.

The CHAIRMAN. Would that be similar to hypertension, where all doctors do not agree?

Dr. RASINSKI. That is correct. Some accept the diastolic level of 90 as being automatically diagnostic of hypertension. Others feel it has to be over 100. Still others vary their criteria according to the age and the weight of the patient.

The CHAIRMAN. Dr. Rasinski, I understand the symptoms of diabetes are increased appetite, increased thirst, increased urination, and weight loss. I believe you mentioned those things.

Dr. RASINSKI. Yes, sir.

The CHAIRMAN. If a patient is taking medication, exercise, and diet that is normally prescribed for diabetes while having no classic signs of the illness, would it be logical from a medical point of view to believe that the individual was not aware that such a pathology did in fact exist because he was not specifically told that he had been diagnosed as having diabetes?

Dr. RASINSKI. That is true, Senator. Many physicians, depending on the criteria that they themselves apply to make the diagnosis, may consider the blood sugar as being elevated, either borderline, slightly, or moderately elevated but still not meeting those criteria which they normally apply to make a diagnosis of diabetes.

The CHAIRMAN. Dr. Rasinski, is it common for an individual to feel that, if he is not on insulin, he does not have diabetes?

Dr. RASINSKI. Absolutely, very frequently.

The CHAIRMAN. Dr. Rasinski, in 1974 Mr. Hultman's glucose level was determined to be 160 milligrams. The record reflects that the patient ate breakfast that morning. Would it be possible for the blood sugar level to reach 160 milligrams simply by eating a meal?

Dr. RASINSKI. Absolutely. As I indicated before, after a meal any normal individual's blood sugar may go up to 160 or even more. The critical factors to know in that situation are how long after the meal the blood sugar test was taken and exactly what the patient had had to eat.

The CHAIRMAN. I presume it would depend largely on what he ate, would it not?

Dr. RASINSKI. Yes, significantly, and the time interval also.

The CHAIRMAN. If it was a bland diet, then it might be different?

Dr. RASINSKI. Yes. It would depend, really, on the amount of carbohydrate that was eaten, either a starch or sugars.

The CHAIRMAN. Dr. Rasinski, I understand the staff has provided you with Mr. Hultman's medical records to include the Shoitz medical report from 1972, the medical report from Mayo Clinic in 1974, the Army medical examination records to include transcripts of the Inspector General's investigation in 1980, as well as statements from Dr. Waterberry, Dr. Smith, and Dr. Purnell.

Would you give the committee your professional and expert opinion on Mr. Hultman's physical condition at the time it was first determined and reported by Dr. Waterberry that General Hultman had a borderline diabetic condition? Was the term borderline appropriately used in this case?

Dr. RASINSKI. From my review of the records, Mr. Hultman did not manifest any of the symptoms of diabetes nor any of its complications. By criteria that were applied at that time, the glucose tolerance test might be considered borderline by some physicians. By others it might be considered indicative of diabetes. It would depend, really, on the mind-set of the interpreting physician.

By today's criteria he would be diagnosed as a very mild diabetic.

The CHAIRMAN. Dr. Rasinski, is there any evidence in the medical files or doctors' statements to show that General Hultman was ever aware the urine tests were positive for sugar or that he ever had a very serious attack of diabetes?

Dr. RASINSKI. The medical records do not indicate what information he was given or what he was told about the presence or absence of sugar in his urine. On the basis of what I have seen of the

record, he has never had a very serious attack of diabetes. At the highest blood sugar level he has ever had, it has only been very, very mild.

The CHAIRMAN. Dr. Rasinski, again in your professional opinion and after a review of the medical records, would it be reasonable to assume that General Hultman was not aware of his total diabetic condition and that he considered himself to be in a preventative medicine mode?

Dr. RASINSKI. I think he understood that there were some abnormalities of blood sugar. It appears from the record that he was never told flat out: You have diabetes. I think it was perhaps a choice of language on the part of the physicians who took care of him and informed him about what the biochemical abnormalities were. Sometimes physicians, as I indicated before, are reluctant to make a diagnosis of diabetes because of all the problems that this may portend from the standpoint of getting life insurance and things like that. They will tell a patient: You have an elevated blood sugar, but to keep things under control you can prevent the onset of frank diabetes by following this particular regimen. And that apparently is what Mr. Hultman did.

The CHAIRMAN. We thank you very much, Doctor, for your kindness here.

After reviewing all of these records and considering Mr. Hultman's case from the records, does the testimony that he gave here today seem to fit in with your conclusions that you have reached?

Dr. RASINSKI. On the basis of what I read in the records, yes, sir.

The CHAIRMAN. Do you have any questions?

Senator GRASSLEY. No questions, Mr. Chairman.

The CHAIRMAN. Thank you very much, Dr. Rasinski. We appreciate the time you have given to come here and testify and add to the record.

Dr. RASINSKI. Thank you, Mr. Chairman.

The CHAIRMAN. Now I would like the record to reflect that the committee contacted the National Institutes of Health, Bethesda, Md., and questioned Dr. Lester Salans, the Acting Director for the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, relative to Mr. Hultman's diabetic history. Although Dr. Salans was unable to be here today, he did submit a letter which I would like to quote in part:

> As I understand it, Mr. Hultman claims that in 1972 he was told by his physician that he suffered from borderline diabetes and was placed on a calorie-restricted diet and the drug tolbutamide, [Orinase]. Borderline diabetes is a term used by many physicians to indicate that the glucose tolerance test is not normal but does not yet fall within the diabetic range. Such persons may or may not eventually develop diabetes. Since there is no indication in the records made available to me that such a diagnosis was made in 1972, I cannot determine whether Mr. Hultman was actually given this diagnosis by his physician. However, it is possible that he was; in this case, he might have assumed that he may actually not have the disorder.
>
> In summary, Mr. Hultman may or may not have adult-onset type diabetes mellitus. Previous tests indicated that such a diagnosis was very likely in 1972, but, after diet and drug treatment, no detectable chemical or symptomatic evidence of this disease was found in 1974. If the question being considered is whether he had diabetes mellitus in 1972, it is highly likely but this cannot be answered unequivocally. Nor can the question of whether he currently suffers from this disease be answered with certainty.
>
> It does seem reasonable to suggest that he be reevaluated at this time if this is the primary concern. If the question is whether he was told he had borderline diabe-

tes in 1972, it is a question which cannot be answered, given the information available. If indeed that is what he was told, then it is possible that, as he has apparently stated, he interpreted that to mean that he did not have diabetes.

Without objection, this letter in its entirety will be made a part of the record.

[Material referred to follows:].

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health
Bethesda, Maryland 20205

April 19, 1982

Honorable Strom Thurmond
Chairman, Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On Friday, April 16, 1982, at the request of Mr. Duke Short, a member of your staff, I examined the medical record of Evan Holtman so that I could advise the Committee regarding whether or not Mr. Hotlman suffers or ever suffered from diabetes mellitus. A summary of my findings follows.

In 1972, Mr. Holtman apparently was evaluated for a possible diagnosis of diabetes mellitus. Although he had no symptoms, he was found in November 1972 to have a diabetic-like glucose tolerance test accompanied by an increased fasting blood glucose level. Subsequently, in December 1972, he was found to have elevated fasting blood glucose levels on four separate days. While these tests do not unequivocally establish that a person has diabetes mellitus, they are the best means available for making the diagnosis. In my opinion, the results of the tests summarized in the medical records made available to me indicate a very high probability that Mr. Holtman suffered from diabetes. However, they do not establish the presence of this disease with certainty; other conditions can cause these kind of abnormalities in glucose metabolism and I found no evidence that they were ruled out.

As I understand it, Mr. Holtman claims that in 1972 he was told by his physician that he suffered from "borderline diabetes" and was placed on a calorie restricted diet and the drug tolbutamide. Borderline diabetes is a term used by many physicians to indicate that the glucose tolerance test is not normal, but does not yet fall within the diabetic range. Such persons may or may not eventually develop diabetes. Since there is no indication in the records made available to me that such a diagnosis was made in 1972, I cannot determine whether Mr. Holtman was actually given this diagnosis by his physician. However, it is possible that he was and in this case he might have assumed that he may actually not have the disorder.

The recorded blood sugar values in 1973 and 1974 appear to be normal and are consistent with a positive response to dietary and tolbutamide treatment. I have no information on the status of his glucose metabolism since that time.

In summary, Mr. Holtman may or may not have adult-onset type diabetes mellitus. Previous tests indicated that such a diagnosis was very likely in 1972, but after diet and drug treatment no detectable chemical or symptomatic evidence of this disease was found in 1974. If the question being considered is whether he had diabetes mellitus in 1972, it is highly likely but this cannot be answered unequivocably. Nor can the question of whether he currently suffers from this disease be answered with certainty. It does seem reasonable to suggest that he be re-evaluated at this time if this is the primary concern. If the question is whether he was told he has "borderline diabetes" in 1972, it is a question which cannot be answered given the information available. If, indeed, that is what he was told, then it is possible that, as he has apparently stated, he interpreted that to mean that he did not have diabetes.

I hope this information is helpful to you.

Sincerely,

Lester B. Salans, M.D.
Acting Director
National Institute of Arthritis, Diabetes,
and Digestive and Kidney Diseases

The CHAIRMAN. I have a telegram that was received today by the committee.

Thank you for your gracious invitation to testify at the confirmation hearings for Mr. Evan Hultman.

I feel obligated to decline your offer at this time, however, because I have taken the matters that have caused me concern to a federal grand jury. I do not feel that it would be appropriate to testify about those matters during an open session of your committee because of the nature of the proceedings now under way in the grand jury.

I felt compelled to take the matters to the grand jury since I heard nothing from the Justice Department in the over two months since I delivered certain documents to Chief Judge Edward McManus for transmission to the Justice Department.

If I may be of further assistance, please contact me.

JAMES R. HYNES.

I am informed that there is a grand jury investigation under way, and the Judiciary Committee will not take a vote on this matter until the results of that action.

Without objection, the letter inviting Mr. Hynes to testify and the telegram in response will be inserted in the record.

[Material referred to follows:]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., April 13, 1982.

Mr. JAMES R. HYNES,
Post Office Box 29, Iowa City, Iowa

DEAR MR. HYNES: The Senate Judiciary Committee has scheduled hearings on the nomination of Mr. Evan Hultman to be United States Attorney for the Northern District of Iowa for 2 P.M., April 21, 1982, in Room 2228 Dirksen Senate Office Building.

I am aware that the Chief Investigator of the Judiciary Committee, Mr. Duke Short, has informed you of this date and of the Committee rules regarding a witness' testimony.

I would like to reiterate, however, that if you wish to testify, you must furnish a copy of your proposed testimony to the Committee 48 hours in advance of the hearing.

If I may be of further service, please do not hesitate to contact me.

With kindest regards and best wishes,

Sincerely,

STROM THURMOND, *Chairman.*

[Mailgram]

IOWA CITY, IOWA,
April 21, 1982.

Hon. STROM THURMOND, *Chairman,*
Committee on the Judiciary,
Dirksen Senate Office Building, Washington D.C.

DEAR SENATOR THURMOND: Thank you for your gracious invitation to testify at the confirmation hearing for Mr. Evan Hultman.

I feel obligated to decline your offer at this time, however, because I have taken the matters that have caused me concern to a Federal grand jury. I do not feel that it would be appropriate to testify about those matters during an open session of your committee because of the nature of the proceedings now under way in the grand jury.

I felt compelled to take the matters to the grand jury since I heard nothing from the Justice Department in the over two months since I delivered certain documents to Chief Judge Edward McManus for transmission to the Justice Department.

If I may be of further assistance, please contact me.

Sincerely,

JAMES R. HYNES.

The CHAIRMAN. Senator Grassley, do you have any questions?

Senator GRASSLEY. I have no questions at this point. If there are other witnesses, I may ask questions.

The CHAIRMAN. I understand the next witness here is Mr. John A. Nard of Pittsburgh, Pa. Mr. Nard, are you present?

Mr. NARD. Yes, sir.

The CHAIRMAN. Do you wish to come to the table and testify?

Mr. NARD. Yes, sir.

The CHAIRMAN. The evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF JOHN A. NARD, PITTSBURGH, PA.

Mr. NARD. Yes, sir. Mr. Chairman, I appreciate this opportunity to testify before your committee on a matter I believe is important not only to the committee but to the country.

I would like to start my testimony with select observation on Mr. Hultman's fitness for the U.S. attorney based on his testimony before this committee, the committee's own staff investigation, and from the charges of two of the most senior members of the committee who have held extensive hearings on Mr. Hultman's fitness: Senators Hatch and DeConcini. In October 1980, Mr. Hultman testified before this committee. As a result, Senators Hatch and DeConcini concluded that Mr. Hultman gave false and misleading testimony to this committee.

In 1981 the committee staff conducted an extensive investigation of Mr. Hultman's activities relating to my case. I would like to enter a copy of this report into the record at this point.

The CHAIRMAN. We will accept it for the committee files. It will be available to members of the committee.

Mr. NARD. Senators Hatch and DeConcini concluded that Mr. Nard was treated unfairly by the Justice Department officials both at Washington headquarters and in the field. Also in 1981, the committee held another hearing focused on Mr. Hultman's activity as a U.S. attorney in Iowa. Again the staff and Senators Hatch and DeConcini concluded that Mr. Hultman's testimony was false and misleading. After the hearing, Senators Hatch and DeConcini asked the Justice Department to consider appointment of a special prosecutor to review the matter. They also asked for convening a new grand jury. As you know, a new grand jury has been convened in the Northern District of Iowa but not at the Justice Department's request, to look into the activities of Mr. Hultman.

After 12 years of living through this nightmare—pardon me, Senator, I have a mistake in this. It says into my case, but it is in Mr. Hultman's affairs. I will correct that.

After 12 years of living through this nightmare constantly believing that the judicial system would somehow work, I must say I have become somewhat cynical. I cannot believe at this point that the Justice Department can investigate my case seriously because it involves an investigation of its own activity.

Now this comes down to a simple question of fitness for a sensitive post in the criminal justice system for Mr. Hultman. According to Senators Hatch and DeConcini and their staff investigation by this committee, Mr. Hultman was a central actor in this sorry

affair. Based on your own committee's investigation and hearings, I submit that Mr. Hultman is not fit for the post of U.S. Attorney in the Northern District of Iowa.

In addition to my statement, Senator, I just have learned that the Department of Justice has withheld the files from the Iowa grand jury since October of my case, which the grand jury in Iowa cannot go after the conspiracy which the Senate committee has developed with the same identical questions that I had submitted to Mr. Hultman to ask of the witnesses that he asked me to do. They have—we have now—it looks like I got a conspiracy case because three of the witnesses have finally told the truth, Senator.

That concludes my statement. Now I would like some other exhibits to enter.

Senator, this is a letter I wrote to Attorney General French Smith. This is a letter of specific information under the provision of 28 U.S.C. 591:

Upon returning from Israel with part of your official U.S. delegation attending the funeral of Moshe Dayan, Senator Roger Jepsen publicly reported following the debriefing at the White House with President Reagan that Senator Jepsen had discussed with you on the plane the appointment of General Hultman as a U.S. Attorney of the Northern District of Iowa.

Exhibit 1. The several newspaper clippings pretty well spell that out.

At this time or a little time afterwards, however, you had knowledge of Senator Orrin Hatch and DeConcini's concern about General Hultman's testimony in front of their committee.

Exhibit 2.

Subsequently, you reported to Senator Hatch and DeConcini there would be no further investigation into the areas concerned. These concerns have been thoroughly aired by a northern Iowa grand jury.

Exhibit 3. I will get into those exhibits shortly, Senator.

These statements made on your behalf in your letter to the Senators are clearly contrary to the undisputed facts and are untrue since you have not talked to the Senators and/or their staff who recommended the action nor the U.S. Attorney who has conducted the grand jury in Iowa. These inquiries would have established the falseness of your statement that the concerns of the Senators have been thoroughly investigated.

Exhibit 4.

In this regard, your conduct as well as the conduct of the persons who within the provisions of 28 U.S.C. 591 Circle Four assist in the response to the Senators, Hatch and DeConcini, would constitute corrupt endeavors, quote, to influence, obstruct, impede the due and proper administration of the law under the proceedings being held before, A, a committee of either house of the Congress, 18 U.S.C. Section 1505 and 371.

Please fulfill your duties under the Special Prosecutor's Act.

I received a letter from the Attorney General which denies any criminality in this. I will read the answer, Senator.

April the 13th, 1982, Mr. John A. Nard, Woodcock Drive, Sewickley: Dear Mr. Nard, the Attorney General has referred to this division your letter of March the 22nd, 1982, seeking appointment of a special prosecutor. In your letter you allege that the Attorney General and others corruptly obstructed a Senate proceedings. The information and exhibits provided by this do not support the allegation criminally, and thus your contentions do not constitute specific information of a Federal offense. If you provide additional evidence which you will support your allegation of corrupt activity on parts covered by the special provision of ethics in government act, we would be ready to see that.

Senator, at this time I would like to interject. I know you already read it. Senator Hatch and DeConcini's statement to you pretty well proves what I said in that letter that these fellows did not do anything. When I get a little farther, you are going to see where somebody's very criminally responsible.

In this letter that you read partially, Hatch and DeConcini accuse the Justice Department of doing nothing, not even looking at their facts, and completely ignored any fact which is in this report.

I would like to introduce it into evidence.

I found out that there is a grand jury on Mr. Hultman out in Iowa. I called the clerk of courts at the city in Iowa and not what the Des Moines Register published this morning. At this point I would like to make a comment about the Des Moines Register, Senator. They have been slamming Senator Hatch, Clark Mollenhoff, and myself, who you know the first two very well, unmercifully. And the reason this is, in my opinion, is that Senator Hatch and Clark Mollenhoff exposed the editor's brother, Mr. Garten, who was, if you will remember, the Carter administration tried to make him resign for taking an illegal $75,000 gift. And it is about time we stopped these newspapers from these erroneous newspaper stories.

When I found out, the lady told me at the clerk of courts that I could only, she could only give me the foreman's name, that she could not give me the address. I got her name, Mrs. Frances Duskin. I called Cedar Rapids information for Duskins; I found two. I called one. The first one I called happened to be her. So, I wrote, which is perfectly legal to do:

DEAR MRS. DUSKIN: I understand that you are the foreman of the recently established Federal grand jury in Iowa. I would like an opportunity to present evidence to your grand jury concerning Mr. Hultman's, the former attorney in Iowa, his improper conduct prior to the grand jury proceedings in Iowa and his false testimony before the Senate Judiciary Committee concerning the improper conduct. For your guidance, I have enclosed the report of the U.S. Senate Judiciary Committee relating to these matters.

Note particularly page 63 to 75. As a result of this Senate investigation, the Senate Judiciary Committee requested the Justice Department to investigate Hultman's grand jury proceeding. A copy is requested, is enclosed. The Justice Department refused further investigation. A copy of the refusal letter.

Both Senator Hatch and DeConcini have written letters to the Senate Judiciary Committee rejecting the Justice Department's refusal. The prior Justice review ignores fundamental defects which are recited in two letters for former grand jury member, Roger Jepsen, two letters from federal attorney in Iowa, James Reynolds, several Secret Service reports on interviews with former grand jury members. Copies of these ignored papers are enclosed.

I would like to present to your grand jury at the earliest opportunity my evidence concerning withholding of significant evidence by Mr. Hultman from the earlier grand jury and his knowledgeable introduction of false evidence to the earlier grand jury, this same evidence which the Justice Department continues to ignore.

I have reason to believe the Justice Department might assign an outside attorney to your grand jury in an effort to restrict the scope of the grand jury's investigation, deliberation.

Yours truly, John A. Nard, copy to the Senate Judiciary Committee.

Mr. SHORT. That letter was received by the committee, Senator.[1]

Mr. NARD. Senator, Mr. Hultman used an excuse for this erroneous testimony he got in the first hearing that he did not have time

[1]The letter, with other material submitted by Mr. Nard, is on file with the committee.

to look at the files. His assistant, Mr. Kirchen, had time to look at the files, and Jim Reynolds had to look at the files. And then, Senator, he asked for another hearing. He had from October, December to October of the following year. A week before, they had to call Senator Grassley's office to tell Senator Grassley's people that Mr. Hultman had not even bothered to look at the records. A few days later, Senate reports to me that an attorney whose firm represents the people I am fighting, the Greyhound Corp., who own Armour's, appeared, and the only thing he took was the document list which Mr. Hultman sent back to me.

Now, this is a pretty serious thing.

Now let me show you that Mr. Hultman and his aides are very used to misusing the grand jury.

I would like to enter into the record a newspaper article. Senator, I have one more I will have to send because I gave it to the Senate Judiciary Committee, and they lost it. This is from the Iowa newspaper, Federal Times: "His Assistant, Kirchen, Gets Censured. Prosecutor Blasted. U.S. Case Thrown Out."

Also, I think you will find I have been told that the judge in Cedar Rapids, Iowa, had so much misuse of the grand jury by Mr. Hultman's assistant that he made them one of the first to start using a court reporter in the grand jury.

So, misusing the grand jury is not new to Mr. Hultman.

I am going to show you, Senator, two FBI agents came to my house. They spent 2 or 3 hours with me. I told them just exactly how to prove that Mr. Hultman was guilty of a 1001, 1505, and 371. And they said, "Well, you say that; we'll send somebody back; we'll turn it into the Justice Department." And they just kept shaking their heads when I showed them the evidence. And your chief investigator says I was only allowed to bring a few minutes of them because he figured I had 15 days' worth of them, which he is pretty close to being right.

Nobody ever came back to see me, Senator. Now, just let me show you a few of them. Senator, I wanted to call your attention to Mr. Hultman's news release. He told the Sioux City, Iowa, newspaper that his grand jury is investigating a multiplicity of irregularities in two cases involving Mr. Nard and Armour's. I want to stress: a multiplicity of irregularities.

And then in Mr. Kirchen's brief, he said: Mr. Nard has proven his allegations in the form of eight large notebooks full of documentation.

Senator, they are the exact same notebooks that your investigators broke a conspiracy in and used to write these reports. And you will find that that committee report is backed up heavily by very substantial documentation, which I will show you some of them.

I have not been able to get the second hearing, but I understand that Mr. Hultman said he was not in charge of the first grand jury. I walked 300 feet from the FBI headquarters in Pittsburgh to Mr. Dan Zaremba's article. And here is an affidavit from Mr. Zaremba I secured.

When I went over to his office, he said he would meet me the following Saturday and give me this affidavit, which he did:

To whom it may concern, When I was present at the grand jury hearings in Cedar Rapids, Iowa in the early 1970, Mr. Evan Hultman was present and asked me the

question concerning the Nard case in Pittsburgh and Sioux City, Iowa. I was the manager of engineering for both Armour, Pittsburgh and Sioux City.

I would like to introduce this statement, sir, but I need a copy of this for the grand jury.

Your own Senate report, Senator—incidentally, also, I have other witnesses that this Mr. Hultman was in that grand jury. I am pretty sure that they will remember. And I will give their names to the grand jury.

The contradiction is as follows—this is page 64—subject, Nard's allegation:

HULTMAN. Interesting during the whole period of time in early 1971, John Nard never mentioned to me anything about the case in Pittsburgh. I had absolutely no knowledge.

Senator DECONCINI: When did he first mention Pennsylvania——.

Mr. SHORT. Hold your voice down just a bit, if you would.

Mr. NARD. OK [continues reading].

It would have been during the second grand jury in 1973. I would have no way of trying to give you that time or date.

Senator DECONCINI: During the first grand jury in 1972, you had no knowledge from him? Absolutely none.

Fact: According to the FBI report dated May 13, 1971, and stamped received by Mr. Hultman's office on May 18, 1971, Hultman told the FBI he was advised by Mr. Nard on April 29, 1971, about the overall allegation in Nard lawsuit with Armour & Co., exhibit 49, which you exhibit. Hultman told the FBI he was of the opinion the matter could be handled in the Pittsburgh court, but he said he would consult with the U.S. district judge, Edward McManus, in Cedar Rapids within a week if possible to get an opinion of the court concerning an overall investigation of Armour's alleged perjury in Pittsburgh and in Sioux City. Hultman also possessed the FBI investigative report dated October 5, 1971, dealing with Nard's allegation of perjury against four Armour officials in pretrial deposition in Nard versus Armour.

Senator, I have much more evidence than that, and I will so state to the grand jury.

Mr. SHORT. Are you offering these records, Mr. Nard?

Mr. NARD. That is your own report, Duke. I am offering this, but I need a copy of this.

Senator, Mr. Hultman, I told the FBI, had these documents. This is a good example of why crime does not pay sometimes. It takes you a long time to get after them. But when Mr. Hultman returned his documents to me, my documents back from the grand jury, I discovered his own handwritten notes and the Armour documents that Mr. Hultman had in his possession and never used.

Now let me show you what Mr. Hultman said. Mr. Hultman said to Senator DeConcini in the first hearing he absolutely, positively did not see Mr. Zaremba's letter. I am going to offer an exhibit, Mr. Hultman's own handwritten notes. To my recollection, that is Mr. Hultman's notes. We can identify them. It was on a piece of paper in Waterloo, Iowa, linking one of—does it all.

In this he states, exhibits, Zaremba's letter to the judge.

Also, he has another letter, Contouris' letter to the judge.

Senator, this exhibit in here.

Let me show you what this letter says, Senator:

The Honorable Judge McManus, In the recent suit against Mr. Nard I was very surprised in Sioux City that Armour Company had been awarded damage at Sioux City. In my opinion as a former project manager of the subject project in litigation, I stated in my deposition in answer to a direct question that Mr. Nard did not delay that job, and I was surprised at the recent verdict. I feel that Armour Company had no basis for a claim of damage against Mr. Nard for delay of the job when all the negotiating circumstances were brought to life. I would like to bring your attention to two points I felt I should emphasize to which I have personal knowledge on the two points. During one of these negotiations between Armour & Company and Nard, the attorney representing Three Rivers Company in Pittsburgh prior to November 21, 1968, Mr. Raymond Gass of Armour, attorney, made a statement regard possible suit termination to Three Rivers contract in Pittsburgh and at the end of this statement ended with the comment: "and that goes for Sioux City, too."

When I found out that we were going to sue Mr. Nard in Sioux City, I asked Mr. Gass why we would take such action since we had a without-cause termination clause in Sioux City contract. He stated that he was certain Mr. Nard would sue Armour & Company in Pittsburgh, and therefore he wanted to sue Mr. Nard first in Sioux City and have the case tried where there would be more favorable climate than in Pittsburgh. It also indicated or implied the removal of the case from Pittsburgh would entail more expense and trouble for Mr. Nard.

In regard for November the sixth meeting, 1968, which the Armour representative and Mr. Nard in Sioux City where complaints were voiced by Armour & Company's project engineer and field engineer regarding the manpower on the job, I made the statement that perhaps Mr. Nard was extending himself too much financially, and if Armour's had paid him within a reasonable period of time, say 30 days, he would have been better able to prosecute the job. By adding additional construction personnel, as I recall, Mr. Nard started work on April 29, 1968, and did not receive his first payment till July of 1968.

Now, Senator, I was sued after they sued me without cause; 2 weeks later I was sued for cause, and I am going to show you how the conspiracy broke by a simple question that your investigators asked Mr. Hartell, who was the key witness that Mr. Hultman never called or he never called Mr. Zaremba back. He let Mr. Zaremba sit in the hall for a few days with other witnesses while he put on a show for us.

The Armour witness testified in trial that the reason the Armour people canceled me was that I was not paying the subs.

Another aspect of the financial difficulties or one might say embarrassment to Mr. Nard was that he would tell his subcontractors or suppliers that Armour Company would pay them directly for their work from funds which Armour Company had on deposit in a certain Sioux City bank. Upon checking with the bank, they would be informed that no such funds were on deposit by Armour & Co.

I in turn would tell Mr. Nard that funds should be in the bank and to my understanding payment procedures of contract upon checking with Armour & Company's treasury department I found that oftimes funds were not on deposit in the bank but only were put there a short time before actual payments were made. Thus Mr. Nard's new suppliers or subcontractors contacted the bank to verify his statement funds were not usually on deposit.

I trust the foregoing will be of some interest with respect to litigation as taken in Sioux City, Iowa.

Senator, I do not have to remind you, with a jury composed of farmers, if you said I was not paying my bills, they would be very upset.

Also, Mr. Hultman had this letter. We have his own list that he sent back to me shows that he had this letter in his possession. He and I discussed it many times.

Also, here he has a letter that was sent to Judge McManus from the engineers and architects who also said that they could not get

material for Armour's, that even after I finished the job they could not get materials to Armour. So, how in the world could Mr. Nard delay the job?

I would like to submit those into evidence.

[Letters referred to follow:]

Exhibit 6

February 18, 1971

The Honorable Edward McManus
Federal Court Building
U. S. District Court
Cedar Rapids, Iowa

Dear Sir:

In their recent suit against Mr. Nard I was very surprised to learn that Armour & Company had been awarded damages by the jury at Sioux City. In my opinion as the former project manager on the subject project in litigation I stated in my deposition in an answer to a direct question that Mr. Nard did not delay that job and I was surprised at the recent verdict since I felt Armour & Company had no basis for a claim of damage against Mr. Nard for delay of the job when all the mitigating circumstances were brought to light.

I would like to bring to your attention two points I feel should be emphasized and to which I had personal knowledge. These two points are as follows:

(1) During one of the negotiations between Armour & Company and Mr. Nard and the attorney representing Three Rivers Company in Pittsburgh prior to November 21, 1968, Mr. Raymond W. Gass, the Armour attorney, made a statement regarding possible suit or termination of the Three Rivers contract in Pittsburgh and at the end of that statement ended with the comment that "and this goes for Sioux City, too."

When I found out we were going to sue Mr. Nard in Sioux City, I asked Mr. Gass why we would take such action since we had a without-cause-termination clause in the Sioux City contract and he stated that he was certain Mr. Nard would sue Armour & Company in Pittsburgh and, therefore, he wanted to sue Mr. Nard first in Sioux City and have the case tried there where there would be a more favorable climate than in Pittsburgh. It was also indicated or implied that this removal of the case from Pittsburgh would entail more expense and trouble for Mr. Nard.

(2) In regard to the November 6, 1968 meeting with Armour representatives and Mr. Nard in Sioux City where complaints were voiced by Armour & Company's project engineer and field engineer regarding insufficient manpower on the job, I made the statement that perhaps Mr. Nard was extending himself too much financially and that if Armour had paid him within a reasonable period of time (say, 30 days) he would have been better able to prosecute the job by adding additional construction personnel. As I recall, Mr. Nard started work on April 28 or 29, 1968 and did not receive his first payment until the first part of July, 1968.

Another aspect of financial difficulties, or one might say embarrassment, to Mr. Nard was that he would tell his subcontractors or suppliers that Armour & Company would pay them directly for their work from funds Armour & Company had on deposit in a certain Sioux City bank. Upon checking with the bank, they would be informed that no such funds were on deposit and would again contact Mr. Nard who in turn would contact me. I, in turn, would tell Mr. Nard that funds should be in the bank according to my understanding of the payment procedures in the contract. Upon checking with Armour & Company's treasury department, I found out that oft times funds were not on deposit in the bank but only put there a short period of time before actual

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payments were made. Thus, when Mr. Nard's new suppliers or subcontractors contacted the bank to verify his statements, funds were usually not on deposit.

I trust the foregoing will be of some interest with respect to the litigation that has recently taken place in Sioux City on this subject.

Very truly yours,

D. E. Zaremba

21

April 22, 1970

Honorable Edward J. McManus
Chief Judge
United States District Court
Federal Courthouse
Cedar Rapids, Iowa

Dear Judge McManus:

We are writing this letter to you because we understand that Armour and Company is advocating a dismissal of Mr. John A. Nard's claim. We cannot imagine why Mr. Nard's claim would be dismissed, nor do we understand the basis on which Armour and Company terminated Mr. Nard's contract and subsequently sued him for delay of work.

Without enumerating the various space changes, basically and briefly, the structure consists of refrigerated spaces and the refrigeration strongly relates to the structural, plumbing and electrical systems of the building.

It is difficult for us to understand then, how Mr. Nard was to erect the building when we as architects and engineers had not completed working drawings. This was because the most important decision, the type of refrigeration units and refrigeration design, was not issued

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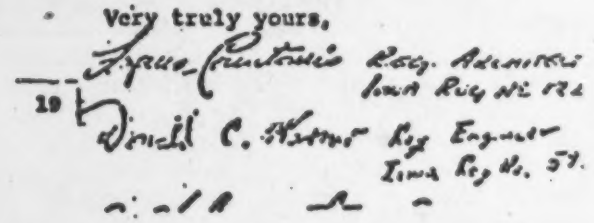
to us by Armour and Company until December 1968, a month after Mr. Nard's agreement with Armour and Company was terminated.

We are all willing to appear and testify in support of the statements that we have made in this letter.

Very truly yours,



Mr. NARD. You already have the list of documents returned, but I am going to submit you another one to show you that, after Mr. Hultman saw what he had done, he did not want to look at the documents.

Incidentally, Senator, this one from Zaremba is your exhibit No. 6.

Mr. SHORT. You are referring to exhibit 6 from the——

Mr. NARD. The Senate report. Your Senate report shows this is one of the things that he falsified. And I think 1505 covers him pretty well.

Senator, let me show you what happened. I need to tell you that my family, due to shenanigans like Mr. Hultman has pulled, has suffered immensely. But my children said: "Dad, keep after him." And that is what I intend to do.

You watch the move I pull onto the Justice Department and French Smith, when French Smith told a mutual friend of mine and his that he knew the Justice Department was full of dishonest people. Now, he said that at a dinner to a friend of mine.

The CHAIRMAN. He made what statement?

Mr. NARD. That the Justice Department was full of dishonest people. But he could not get rid of him, a bureaucrat. In privacy, Senator, I will tell you that man's name, and you will find that he is a very good friend of yours. And he also said he heard it from other people at the Justice Department.

Now, if Mr. Hultman would have followed my advice when he personally asked me, I said the first thing you do, Mr. Hultman, the witness who will break will be Hartell. So, Mr. Jim Phillips, I understand, traveled to Idaho and took Mr. Hartell's deposition.

Now, Armour sent me a letter canceling me without cause, which was fine, but to try to break me they sued me in Iowa 2 weeks later, the long-arm statute for fraud. The project manager, Mr. Zaremba, admitted under oath in his deposition that he did not know whether they were suing me, and I did not delay. Their assistant project manager also under oath admitted delay. And you will see that the books the Senate had, that Mr. Hultman had, I had it marked right in the book what Mr. Hultman was to do. He went up and asked Mr.—the attorney testified that Mr. Hartell told him I delayed them. Mr. Hartell told Mr. Phillips under oath that he did not cancel me for delay. I did not delay them in Sioux

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City. But he canceled me in Sioux City because they canceled me in Pittsburgh.

So, you see, the whole Sioux City case was one big fraud. Mr. Hultman never put one of these people into grand jury, after he said that they had a multiplicity of irregularities and I had proved my allegation.

Now, let me show you what he did to this grand jury, and this committee is trying to make him the U.S. attorney. I am going to show you pure documented proof, not glamorous words.

The first grand jury Mr. Hultman called Dan Zaremba. He always consistently blamed the judge. You see, what Mr. Hultman did, when I first met Mr. Hultman he said he did not know anybody from Pittsburgh. But I think your investigators will tell you I am damn smart. I checked him out before I ever went out there. He knew Mr. Scranton. He was, run part of Scranton's—and he knew all the same actors that were involved in Pittsburgh for my investigation.

Now let me show you what he did. The first grand jury, to prove a multiplicity of irregularity, he called one witness, never called him back. The second grand jury. Now, he used the excuse, the second grand jury, he blamed Mr. Kirchen for everything. Now, how you can confirm this man without bringing Mr. Kirchen back on this hearing, I will never know. Now, he said he did not see the records, from my understanding of what was said. As I said, I have not seen the transcript yet.

But he is not telling the truth. You will find in his file a letter written from Mr. Kirchen to Tom Jackson after the first grand jury—I mean second grand jury, that Mr. Hultman was going to personally handle this case. Mr. Kirchen—Mr. Hultman had me out on election day, I think it was in 1974. I spent the whole day going over every one of these documents including the diversion of funds and how Armour's framed my income tax. And I will let you hear Hultman's own words agreeing with that.

Now, the second grand jury. The second grand jury, we were subpenaed. He subpenaed Mr. Frank Messenger at the—the Armour project, the Armour man, engineer on the job. He subpenaed Bill McKavis. He subpenaed Dan Zaremba. He subpenaed myself and a fellow, Pete Caramadis from Puerto Rico.

I questioned Mr. Hultman's wisdom on trying to prove hundreds of false information statement or perjury. I call them false information. That is where I think the Senate made the mistake. This is 1505 and 1001 under Code 18.

We sat in the hall. We could not figure out what was going on. No. 2, Armour showed up without any documents. Senator, if I would have done that, I would have been in the hoosegow.

This gave Mr. Kirchen a chance to get buddy buddy with the Armour attorney and use taxpayers' money to go all over the country to look at these documents. Yet, Mr. Hultman says he had no money for a court reporter. I am sure those trips to Pittsburgh, Detroit, and Phoenix cost more than a court reporter.

OK, now, Dorothy Gee, the Secret Service interviews. Now, Senator, to satisfy Mr. Grassley, they called me for an investigation. Let me tell you how I got these reports. The Secret Service came to me and spent a full day with me. Let me remind you of one thing, Sen-

ator. I have been in front of three or four—few of Mr. Hultman's grand juries, too, in front of Mr. Zaremba's grand jury. I have been in front of the congressional. I gave them a written statement which is under oath.

Nobody has ever one time accused me of lying.

Now, here is how I got these. The Secret Service came to me to find out the questions asked these, to ask these witness. And you will see in the Government's file a letter that the Secret Service sent me a copy. And I never used them one—even I had them for a year, until the Senate made them public. You notice the ones they made public, the Senate, they marked out the important stuff.

I checked with Mr. Jim Reynolds, the U.S. attorney. He told me these are not covered by schedule 10. These are not grand jury documents, and I could have them.

The interesting part about this grand jury, Mr. Grumpy Fisher was the foreman. Mr. Kirchen wanted me to go and visit Mr. Grumpy Fisher at his office because he was a former State legislator and he would know, understand this case because there were so many counts of misrepresentation. In fact, Mr. Kirchen showed me the legal book, how he could get an indictment for false information by throwing the books up against the wall.

Now, we were in the hall for maybe 2 or 3 days, standing, twiddling our thumbs. On Friday afternoon at 2 o'clock or 1 o'clock, I was put in the grand jury. The first thing I did, I looked for Grumpy Fisher. Mr. Grumpy Fisher was nowhere to be found. The acting grand jury foreman was Miss Dorothy Gee, OK? Now, I told the Secret Service, I said: "You get Mr. Fisher, interview him." They interviewed Mr. Fisher. Mr. Fisher said that I was a shyster. They said: OK. So we—you remember? Yes; I remember the case. So, they said: If you got your—he, Mr. Fisher, said: I even got my files on the case. So, he went to get his files. He had nothing on the Nard case. You know what he said? There's nothing important. You check with the U.S. attorney and the Secret Service. You will find that Mr. Grumpy Fisher was not there that afternoon.

Now, Mr. Grumpy Fisher has been mouthing all over Iowa. I have told my attorneys in Iowa to find out who told him I was a shyster. He never saw me a day in his life.

Now, the acting foreman was Mrs. Gee. Mrs. Gee described the other members of the grand jury as being very confused——

Mr. SHORT. Mr. Nard, what are you reading from?

Mr. NARD. I am reading from a Secret Service report which you all have.

Mr. SHORT. Summarize that rather than reading the entire report please.

Mr. NARD. OK. This report says——

The CHAIRMAN. Mr. Nard, I do not want to rush you, but it is getting late.

Senator GRASSLEY. Where did you get that Secret Service report?

Mr. NARD. I told you, Mr. Grassley, a while ago. These Secret Service reports, you check the Justice Department in Washington, you will see a letter from the Secret Service that they sent me a copy of these reports. There is a letter on file. The Senate Judiciary Committee has a file. I gave the Secret Service the questions they asked.

Senator, I also think just one more thing——

The CHAIRMAN. If you would make your testimony as brief as you can.

Mr. NARD. OK, Senator, I will just summarize it. You see I have got the documentation.

Senator, the other day I receive—I have been 15 years, 12 years, in the Internal Revenue. Now, Mr. Hultman had all the files in Internal Revenue. I testified a half a morning on the Internal Revenue, how they framed the lawsuit in Mr. Hultman's grand jury. He never indicted me for false information. I have his telephone interviews, he agreeing with me that they, that they were in on diverting the funds and framing the income tax. Hultman agrees I have his—Mr. Grassley, I might ask, that I called you as a courtesy and Senator Jepsen to show you all this before you all got in this whipsaw. Senator Jepsen called me back. You never returned my call. Your people just keep sending these ridiculous press clippings out.

Senator, to show you there is nothing wrong with my income tax, here is—I showed this to your assistant. I pretty well showed Mr. Short.

I want to compliment you on having the only assistant in this Senate that ever returns a phone call. That is Mr. Short. He has never failed to return a phone call.

The only way I was able to get this—Mr. Grassley, you are going to be awfully interested in this after your man has called me a convicted felon. Incidentally, one more thing. You will find in the Justice Department file that Mr. Hultman had the authority to look into my complaint on the income tax. Senator Thurmond, the Justice Department hid that letter from your staff. You are the oversight of the Justice Department. I think you understand why. Mr. Hultman repeatedly told me he never heard from Mr. Kleinschmidt there is a document on file.

The year before last, I said, "Look, I'm not paying you the $1,800, the income tax." I never paid them. And I turned around and sued the Internal Revenue. The Internal Revenue do not want to go to court, Senator. They sent me a letter the 18th of January, 1982: "Return 1040 tax period thirty-one sixty-seven." This is the year they said I made $36,000 and did not report it. Your Senate staff has my income tax showing that I reported roughly $44,000, and it was reported. Now, you think if they told the grand jury that, they would have got an indictment? Now, here is what the letter says, Senator Grassley:

> John and Kay Nard, return form 1040, December 31, 1967: We are pleased to tell you that our examination of your tax return for the above period shows no changes required in the tax reported. Your returns are accepted as filed. If you have any question, please contact the person and telephone number showed above.

That was one of the years, Senator, I was indicted, which is a disgrace for this country.

Now, in 1968, they said I stole $5,000 out of a hundred and ten. And I think your staff man, Duke Short, will tell you I am a bigger operator than that. I would steal a hundred and ten out of five, but I would not steal five out of a hundred and ten.

We went to Internal Revenue to sue this case. They cannot tell us what I owe. I have got four different sets of figures. You take your pick, Senator.

Now, the Justice Department, my partner sued them. I had three partners who had the same income and reported the same way. I am the only one who got sued. They investigated me for four periods: 1966 through 1969, the 1966 and 1969, and took me to Tax Court. When Mr. Hultman started messing around—Mr. Hultman is very familiar because I presented the evidence in the grand jury. They wanted to go to conferee. It took me exactly 7½ minutes for them to say there is nothing wrong with 1966 and 1969. If you looked at the Internal Revenue's way off. They should have gone 1969 because I stole more money then, they said.

But they picked the 2 flimsy years that the Armour attorney who Mr. Hultman had a statement from, Dan Zaremba, Armour's project, he heard that they turned me in for the income tax. And they diverted all the funds. Mr. Reynolds, the grand jury found that they diverted the funds. Mr. Hultman tells me on the telephone he agrees with me they diverted the funds.

Now, Senator, you have got small children. I hate to tell you what damages this has caused my children, and I do not intend to let this committee let Mr. Hultman get away because he is no better than an ordinary criminal because he is a phi beta kappa, and he knows better than to do this.

Now, the 1968 return, I got a letter from my attorney that Mr. Lyons at the Justice Department could not settle with them to give them the $300,000 loss we had in 1968 because that would preclude the fraud penalty against Mr. Nard. And the Justice Department wanted to punish me.

It has been 12 years. They have never tried to collect it. The agent came up to get it. He said: Mr. Nard, don't pay us; you don't owe it. I will give you that agent's name if you need it.

So, when we went to get it back now, Senator, I found out that the Internal Revenue made a phony settlement, that I say is phony, with my partners. They would let them take the—we had, really, all told, a $1,200,000 loss because the judge's decision was so bad in Pittsburgh. And Mr. Hultman states that both of these decisions are absolutely unbelievable. Shows that in 1968 I had a loss of over $185,000. So, how could I——

The CHAIRMAN. Mr. Nard, we will have to confine this hearing here to the evidence that you care to present.

Mr. NARD. I have got the evidence for this.

The CHAIRMAN. You have been talking here for some time. We cannot keep on indefinitely——

Mr. NARD. Well, OK, I will conclude with that. Senator, I have the evidence on the income tax.

Mr. SHORT. Wait until the chairman finishes his statement, if you would please.

Mr. NARD. What?

Mr. SHORT. Wait until the chairman finishes his statement, please.

Mr. NARD. I am sorry, Senator.

The CHAIRMAN. Are you about finished now?

Mr. NARD. No, sir. I could go on for 15 days with the stuff that this man did. I have definite evidence that he knowingly let false information——

The CHAIRMAN. We are not interested in going into life histories——

Mr. NARD. OK. I am just talking about the income tax. Senator, do you realize that Mr.——

The CHAIRMAN. If you have covered the points here you wanted to make, then I want Senator Grassley to have a chance to ask you a few questions.

Mr. NARD. OK, I will take Mr. Grassley's questions. But I would like to show the committee how he knowingly let false information be given in the grand jury.

The CHAIRMAN. What is it you want to show now?

Mr. NARD. Well, I wanted to show you how he knowingly gave false information to the grand jury. Now, I think I have shown it to Mr. Christensen.

The CHAIRMAN. Those matters are before the grand jury now, are they not?

Mr. NARD. Yes. No; I do not know. I have not heard——

The CHAIRMAN. We will let the grand jury take care of that.

Mr. NARD. Senator, I have not heard back from the grand jury foreman.

The CHAIRMAN. I see.

Mr. NARD. OK, we will let the grand jury take care of it. Mr. Grassley, I will be glad to answer any questions you want. As I said before, I offered to come down and see you before.

The CHAIRMAN. Senator Grassley, please proceed.

Senator GRASSLEY. I asked you where those reports came from, and you said that they came from the Secret Service.

Mr. NARD. The Secret Service.

Senator GRASSLEY. Did the Secret Service send them to you?

Mr. NARD. Yes, sir.

Senator GRASSLEY. The reason I ask that is because District Attorney Reynolds was quoted in the Des Moines Register as saying that he gave them to you.

Mr. NARD. No. Well, in the first place, I do not believe anything that the Des Moines Register said, Senator. The way they came to me, I have a letter from the Secret Service. The staff has it. They sent it to me at Mr. Reynolds' request. I gave them the questions to ask, Senator.

Senator GRASSLEY. You stated in your testimony that you are aware of a grand jury presently being conducted by U.S. Attorney James Reynolds in Cedar Rapids, Iowa, concerning Evan Hultman.

Mr. NARD. Yes.

Senator GRASSLEY. Do you know anyone who has testified in the grand jury?

Mr. NARD. The way I found out about the grand jury, Mr. Hynes called me and told me about it.

Senator GRASSLEY. He did?

Mr. NARD. Yes.

Senator GRASSLEY. Do you know anyone who has testified in it?

Mr. NARD. No. I do not know of a soul other than Mr. Hynes called me and said that he went into the grand jury.

Senator GRASSLEY. Have you contacted in any way members of that grand jury?

Mr. NARD. I submitted a letter, Senator. I wrote Ms. Duskin. I submitted it as evidence. When I submitted it, I sent the Senate Judiciary Committee a copy and gave it to Mr. Short, and which, Senator, is very legal. Mr. Short has a copy; I gave it to him the other day.

Senator GRASSLEY. I wanted to ask you this. You stated in your previous testimony what you told the foreman of the grand jury.

Mr. NARD. I gave you the letter. That is the only thing I ever said to her. I sent the letter. I told her I was going to send her a letter. You got the letter——

Senator GRASSLEY. And you do not have the names of all the grand jury members? You just——

Mr. NARD. No. I just have this foreman's name. But they are public record at Cedar Rapids. I do not know. I talked to the Cedar Rapids reporter. I said: is that public record? He said: certainly, it's public record. He said: I go over there all the time.

But evidently the Des Moines Register cannot find out. I just picked up the phone and called. They gave me their last name and the first name, but they cannot give you the address.

Senator GRASSLEY. Do you have in your possession or have you ever had any medical records of Evan Hultman?

Mr. NARD. I have once—every day or two I get two or three little excerpts somebody sends me in the mail. And I told Mr. Short about that.

Senator GRASSLEY. Do you have actual medical records, though?

Mr. NARD. I do not know what they are. Somebody sent me a little—somebody called me from somewhere and wanted to know if I wanted a copy of them. I said: I don't want any. I do not care about his medical records. I have got enough on him. What do I want to know about his medical records?

I only have—somebody sent me a letter that some doctor sent him, that he sent some doctor. Somebody sent me three pages of it with a note on it. I did not even read it. I am not concerned about his medical records.

Senator GRASSLEY. Who are these somebodies you are talking about?

Mr. NARD. They never put the envelope on it. They never—probably the same person that sent that letter to him, I mean to the general.

I do not care about his medical. If the fellow has diabetes, I feel sorry for him. I would like to see everybody in good health.

Senator GRASSLEY. Do you or have you ever had any other documents including Army IG reports pertaining to the medical history of Evan Hultman?

Mr. NARD. Other than what comes in the mail to me, that is all I got. And I just throw them away. I am not interested in it. What should I be interested in it for?

Senator GRASSLEY. How well do you know this Jim Hynes who sent you the telegram—I mean, who sent us the telegram.

Mr. NARD. Jim Hynes, when it hit the Iowa newspapers, made a phone call to me. I never have seen the man before in his life. And that is how I met Jim Hynes. He called me on the telephone.

Senator, I must get 50 calls a week from people. I tell you, my mailbox is chuck full of people that have been mistreated by the courts. They think I am the national savior.

Senator GRASSLEY. What were the circumstances leading to and what has been your relationship with Mr. Hynes since that first time that you have had that——

Mr. NARD. I talk to him quite often. I talk to him quite often. He is interested in me—I am not interested in medical, care less.

As you see from the evidence I have got, Senator, I do not need it. And I want to remind you again, Senator, I was a gentleman; I picked up the phone and called you.

Senator GRASSLEY. What was the specific reason for your first contact with Hynes?

Mr. NARD. Mr. Hynes called me on the telephone. He called me.

Senator GRASSLEY. Have you discussed this matter of Hultman's medical records with——

Mr. NARD. Oh, yes. He has discussed it with me. And I keep telling him I don't care. I have discussed it with Duke. I could care less. I just do not understand how you can have di—I always thought diabetes was pretty serious. I have a very good friend of mine with it; I didn't know.

Senator GRASSLEY. Since you said you did discuss it with him, when, where, and was there anybody else present?

Mr. NARD. Oh, just telephone calls and obviously with him here in Washington at one time.

Senator GRASSLEY. Was anybody else present?

Mr. NARD. Mr. Kirchen was the only one who was present when I was with him.

I do not hide anything, Senator. I have nothing to hide.

Senator GRASSLEY. Have you ever discussed the matter of Hultman's medical records with U.S. Attorney James Reynolds?

Mr. NARD. Not in any detail. I just told him that Mr. Hynes called me when I first found out, because I like to keep things—everybody knows it. I have discussed it with Duke.

Senator GRASSLEY. Approximately when and where was it?

Mr. NARD. I do not have any idea. I talked to him on the phone.

We are trying to get a conspiracy case, and Mr. Reynolds has no files.

Senator GRASSLEY. Was Reynolds already aware of those medical records?

Mr. NARD. Mr. Reynolds never tells me anything, Senator. Mr. Reynolds is a gentleman.

Senator GRASSLEY. He does not tell you anything, but he talks to you on the phone all the time.

Mr. NARD. I call him. He calls me, asks me for evidence. And I send it out to him. Mr. Hultman will tell you; when I go after them, I go after them. I got the evidence. You remember, he says I called him at least 500 times. Many a time I could not get hold of him.

Senator GRASSLEY. Was Reynolds already aware of these medical matters?

Mr. NARD. I have no idea. Mr. Reynolds never discussed it with me.

Senator GRASSLEY. Have you ever discussed the matter of Hultman's medical records with any Federal judge?

Mr. NARD. No, sir.

Senator GRASSLEY. Have you ever discussed the matter of Hultman's medical records with Clark Mollenhoff, Jack Anderson, Jim Coates, or any other reporter?

Mr. NARD. Yes. They have talked to me about him. In fact, they all have. They all talk about it. And I tell them all the same thing: I could care less.

You see the evidence I got. I do not need any medical report. You have seen the Senate's report. Take it home and read it, Senator; it makes damn good reading.

Senator GRASSLEY. When was the first time you were aware of the issue of Hultman's medical records, and who notified you?

Mr. NARD. I told you that. I answered that question: Mr. James Hynes.

Senator GRASSLEY. I have no further questions.

We will stand in recess for about 5 minutes until Senator Thurmond comes back to continue the work of the meeting.

[A short recess taken.]

The CHAIRMAN. The meeting will resume.

Mr. Hultman, would you care to respond to anything?

Mr. HULTMAN. No; I would not honor it with dignity of a response. All of those items, for the record, Senator, have been a matter of all these grand juries, and so forth.

The CHAIRMAN. We have all had a chance to be heard then. We are now going to adjourn the committee. I wish to thank all of you for participating and coming. We appreciate your presence.

The committee is adjourned.

[Whereupon, at 6:51 p.m., the meeting was adjourned.]

DEPARTMENT OF JUSTICE CONFIRMATIONS

WEDNESDAY, MAY 5, 1982

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, in room 2228, Dirksen Senate Office Building, at 2:20 p.m., Senator Strom Thurmond (chairman of the committee) presiding.

Staff present: Duke Short, chief investigator; Bill Christensen, investigator; Allan Spence, investigator; and Pamela Swanner, clerk.

NOMINATION OF BEVERLY E. LEDBETTER

The CHAIRMAN. The committee will come to order.

Today we have a hearing on Beverly E. Ledbetter, of Rhode Island, to be Assistant Attorney General for the Office of Research Statistics and Special Projects.

Is Ms. Ledbetter in the room?

Ms. LEDBETTER. Yes, I am.

The CHAIRMAN. Ms. Ledbetter, would you come around to the table?

You are from Rhode Island, I believe.

Senator Pell, you are here.

Is Senator Chafee here?

Senator CHAFEE. Yes.

The CHAIRMAN. Would you gentlemen like to say a word in behalf of this lady before we swear her and take her testimony?

STATEMENT OF HON. CLAIBORNE PELL, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator PELL. Thank you very much indeed, Mr. Chairman.

I come before you to support the nomination of Beverly Ledbetter to serve as Assistant Attorney General for the Office of Research Statistics and Special Projects.

In Ms. Ledbetter's short career in Rhode Island she has distinguished herself as general counsel of Brown University and is the first person to hold the important job of general counsel of Brown University. Previously she served in a similar capacity at the University of Oklahoma, as well as teaching and lecturing in several college programs.

At the Justice Department, Ms. Ledbetter will help to coordinate one of the Federal Government's most important roles: helping law enforcement officials at the local level fight the crime epidemic

that permeates every neighborhood and community in our State and in our Nation.

Specifically, she will oversee and coordinate the remaining Federal assistance programs, as well as special programs involving Federal-State initiatives.

I can think of no more important area for the Justice Department than leading the fight against crime. And I am confident that Ms. Ledbetter will do her very best and congratulate her on being chosen to do this job.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Chafee, we are glad to have you with us.

STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you very much, Mr. Chairman.

I want to join in introducing to the committee and supporting the nomination of Ms. Beverly Ledbetter, a Rhode Islander, to be the President's nominee to be the Assistant Attorney General for the Office of Research Statistics and Special Projects.

Ms. Ledbetter attended Howard University, where she earned a Bachelor of Science degree. She attended Howard Medical School for 2 years and then went to the University of Colorado Law School, where she obtained her law degree.

After law school, Ms. Ledbetter became legal counsel to the University of Oklahoma and at the same time lectured, as Senator Pell said, in the university's law school, nursing school, and education colleges.

In 1978, about 3 years ago, Mr. Chairman, Ms. Ledbetter became Brown University's first general counsel. And since that time we have had the privilege of calling her a Rhode Islander.

I would like to point out to members of the committee that the position Ms. Ledbetter will be assuming has just been created and it is considered to be of major importance to the Justice Department. It was established to coordinate the activities of the five criminal justice research agencies created under the Justice System Improvement Act of 1979.

To fill that job the administration wanted someone with a fresh, objective outlook to oversee these criminal justice research activities. They have such a person in Ms. Ledbetter. She is bright and articulate. She will provide strong and effective leadership to the Department's Office of Research Statistics and Special Projects.

So, we want to thank you and urge favorable consideration and say we are very pleased that Ms. Ledbetter is prepared to accept this responsibility should she be approved by this committee and confirmed by the Senate.

The CHAIRMAN. Thank you very much.

Ms. Ledbetter is fortunate to have the endorsement of Senators from her State, who are very able people.

Ms. Ledbetter, if you stand up now, we will swear you and take your testimony.

[Whereupon, Beverly E. Ledbetter was duly sworn by the chairman.]

The CHAIRMAN. Do you have any members of your family here that you want to introduce?

TESTIMONY OF BEVERLY E. LEDBETTER, NOMINEE, ASSISTANT ATTORNEY GENERAL, OFFICE OF RESEARCH STATISTICS AND SPECIAL PROJECTS

Ms. LEDBETTER. No, sir. They are all in Texas.

The CHAIRMAN. A question on a committee questionnaire reads this way:

> Has a tax lien or other collection procedure ever been instituted against you by Federal, State or local authorities? If so, give the particulars.

I believe you responded "no" to this question.

Subsequent to your response the committee received the following information from the Internal Revenue Service:

> Our records do not show that income tax returns for 1978, 1979, and 1980 have been examined.
>
> Our records show that income tax returns were filed for 1978, 1979, and 1980. As of July 13, 1981, the date of the taxpayer's waiver, furnished to the Department of Justice, the 1979 and 1980 returns had not been filed, however, they were subsequently secured by a Revenue Office on July 21, 1981, and July 24, 1981, respectively. There is no record of failure to pay any tax within 10 days after notice and demand or penalties for negligence during the tax years indicated above. There is no record of criminal tax investigations or civil penalties for fraud under the internal revenue laws.

They have sent the copies of the income tax reports to us for review.

Now, Ms. Ledbetter, in light of this, would you tell the committee why you answered "no" to the question concerning collection procedures?

Ms. LEDBETTER. I certainly would.

I believe that I obviously misread the intent of the question. I probably was more impressed by the question asking had any tax lien been filed, which I obviously knew to be not so, than I was by what was meant by "collection procedures." Certainly in my mind no collection procedures had begun.

I had received notice that the Department did not have a copy of my income tax return for 1979 and for 1980. In fact, I had taken at the time I received the notice, about 1979, I had taken out an automatic extension for filing.

What had happened was that I had simply not filed the request for a special extension and the automatic extension had expired.

And the 1980 return, it had not been filed at that time, but I believe at the time that you got that report it also was not due because of the automatic extension that had been granted for the 1980 return.

The nontimely filing of the 1979 return was, in my mind, possibly associated with the fact that I owed no income taxes. I had done the requisite figuring for the automatic extension and had found that I was due a return. At that time I had requested the automatic extension and, not expecting to owe any taxes, and subsequently I did not owe any taxes, had simply let it escape my mind.

At that time I had recently moved from Oklahoma to Rhode Island. I had been unable to sell my home and had subsequently

become involved in leasing the premises and did not have the requisite records to fill in that portion of the return.

I became aware of it when it was time to file the 1980 return, and I got the automatic extension for the 1980 return.

I subsequently filed both returns; did not owe any taxes with respect to the 1979 return; paid the taxes that were due with respect to the 1980 return.

By the way, let me point out that had I had the slightest hint that I was going to be nominated for Assistant Attorney General, I certainly would have filed those returns not only in a timely fashion, but much earlier than they were requested.

The CHAIRMAN. The letter from the Internal Revenue Service dated November 10, 1981, will be made a part of the record.

[The following was received for the record.]

[Memorandum]

NOVEMBER 10, 1981.

To: Senator Strom Thurmond, Attention: Duke Short, Committee on the Judiciary, U.S. Senate.
From: Director, Disclosure Operations Division TX:D, Internal Revenue Service.
Subject: Tax check report.
Taxpayer: Beverly E. Ledbetter, Providence, R.I.

Our records do not show that income tax returns for 1978, 1979, and 1980 have been examined.

Our records show that income tax returns were filed for 1978, 1979, and 1980. As of July 13, 1981, the date of the taxpayer's waiver, furnished to the Department of Justice, the 1979 and 1980 returns had not been filed, however, they were subsequently secured by a Revenue Officer on July 21, 1981 and July 24, 1981, respectively. There is no record of failure to pay any tax within 10 days after notice and demand or penalties for negligence during the tax years indicated above. There is no record of criminal tax investigations or civil penalties for fraud under the internal revenue laws.

As requested, attached are copies of income tax returns for 1978, 1979, and 1980 years.

This completes our report.

The CHAIRMAN. In view of this conflicting information received by the committee, we attempted to reconcile the difference between your answer to question No. 5 and the IRS report.

On December 3, 1981, you were interviewed by members of the committee staff, whom you advised that you had, in fact, received tax-demand notices and had personally contacted the IRS in regard to these notices.

You also stated that if you were asked question No. 5 again, that you would still answer "no" because you were not aware of any investigation or collection procedures having ever been instituted against you.

You further advised that you had contacted the IRS in Providence, R.I. and that they were not dismayed about the delinquency of your 1979 tax return and were willing to assist you in the filing of that return.

Ms. Ledbetter, would you tell the committee what transpired in your conversation with the IRS in Providence, R.I.?

Ms. LEDBETTER. I believe a Mr. Chandler from the IRS contacted me and said that he had a request—and I suspect it would have been from your committee—with respect to my pending nomination for tax information and that he had discovered that I did not

have the 1979 and 1980 tax returns on file. He suggested that I file those as soon as possible.

I believe that he noted that I did have an extension with respect to the 1980 return which was still applicable, but that the 1979 return, for which I did not owe any taxes, was overdue.

He said that they would be happy down at the local, or Providence, office of the IRS to assist me in putting together my returns, and by that I assume they meant any technical assistance which the centers normally provide.

I did not get the impression that there was a great deal of concern, except that I had to have the reports in; that the 1979 return was overdue, and that the 1980 return, even with the extension, would be due very, very, very soon.

The CHAIRMAN. What date were you contacted by the IRS?

Ms. LEDBETTER. Sir, I really do not remember.

The CHAIRMAN. Could you give us an approximate date?

Ms. LEDBETTER. If you are speaking about Mr. Chandler, I really do not know. I would say several weeks perhaps before I filed. If you are speaking about the pro forma notices—

The CHAIRMAN. After you were nominated.

Ms. LEDBETTER. I really do not know, Senator.

The CHAIRMAN. You could not say whether it was between the 1st and the 10th of the month or between the 10th and the 15th?

Ms. LEDBETTER. I certainly could not.

The CHAIRMAN. Or whatever period it was?

Ms. LEDBETTER. No. I certainly could not.

The CHAIRMAN. In order to further clarify this matter, the committee again contacted the Justice Department and the IRS offices in Washington and Providence, R.I. After numerous conversations with the IRS the Committee received the following letter from the IRS Acting Director of the Disclosure and Security Division, which reads as follows:

To simplify the matter we have queried Providence District and the following is the narrative of events in this matter as shown by our file:

Prior to the receipt of a request for tax check on this taxpayer the Providence District was already pursuing a Tax Delinquency Investigation to secure a delinquent return for tax year 1979. On July 14, 1981, because of our previous efforts in this TDI the taxpayer appeared at our Providence office and filed her return for tax year 1979.

As is our usual practice in such matters the taxpayer was at that time also asked the status of her return for tax year 1980 for which she had obtained a valid second extension of time in which to file through July 15, 1981. She advised the district that the 1980 return would be filed by July 16, 1981, a Thursday. The district advises that she was not at that time advised to delay filing until such time as her records were available.

Did you state to the committee staff that you were advised to delay the filing?

Ms. LEDBETTER. No. I did not. In fact, I think that what I stated was that I was told that I could file, secure the records, and then amend my tax return.

If what I said was, in fact, interpreted that way, it certainly was not my intent to suggest the same.

I was told by Mr. Chandler that the best thing for me to do would be to immediately file; that I should then secure whatever

records I needed and make the appropriate amendment of my return.

The CHAIRMAN [continues reading].

On July 20, 1981, this office received a request for tax check from the Department of Justice for tax years 1978, 1979, and 1980, with accompanying waiver of taxpayer dated July 13, 1981. A transcript was thereafter received from the National Computer Center indicating no record of filing for tax years 1979 and 1980. We then contacted on July 23, 1981, the District office for the status of these outstanding returns and were advised the next day, July 24, 1981, that a return for 1979 had been secured after a T.D.I. and that the 1980 return was just filed on July 24, 1981.

District records indicated that Ms. Ledbetter was again contacted on July 23, 1981, because of the tax check, and advised the contactor, a different employee than the one dealt with on July 14, that she had received an extension to file until the previous July 15, 1981 and that by arrangement on the previous contact, would file by Friday, July 24, 1981. In fact, the records and recollection of employees involved shows that she had promised to file by Thursday, July 16, 1981.

The District advises after interviewing the employees involved that no one can recall advising the taxpayer to wait to file until after all her records were received.

This letter dated April 16, 1982, will be made a part of the record also.

[The following was received for the record:]

Internal Revenue Service
memorandum

date: 16 APR 1982

to: Senator Strom Thurmond
Attention: Duke Short
Committee on the Judiciary
U. S. Senate

from: Acting Director, Disclosure and Security Division PM:S:DS

subject: Tax Check Report

Taxpayer: Beverly E. Ledbetter
77 Williams Street, #1
Providence, RI

SSN: 453-66-5463

This will supplement our memorandum to you of March 16, 1982 with respect to the above taxpayer, as requested by Mr. Christenson of your staff.

To simplify the matter we have queried Providence District and the following is the narrative of events in this matter as shown by our file:

1. Prior to the receipt of a request for tax check on this taxpayer the Providence District was already pursuing a Tax Delinquency Investigation (TDI) to secure a delinquent return for tax year 1979. On July 14, 1981 because of our previous efforts in this TDI the taxpayer appeared at our Providence office and filed her return for tax year 1979 (a refund return).

2. As is our usual practice in such matters the taxpayer was at that time also asked the status of her return for tax year 1980 for which she had obtained a valid second extension of time in which to file through July 15, 1981. She advised the district that the 1980 return would be filed by July 16, 1981 (a Thursday). The district advises that she was not at that time advised to delay filing until such time as her records were available.

3. On July 20, 1981 this office received a request for tax check from the Department of Justice for tax years 1978, 1979 and 1980 with accompanying waiver of taxpayer dated July 13, 1981. A transcript was thereafter received from the National Computer Center indicating no record of filing for tax years 1979 and 1980. We then contacted (July 23, 1981) the District office for the status of these outstanding returns and were advised the next day (July 24, 1981) that a return for 1979 had been secured after a T.D.I. and that the 1980 return was just filed on July 24, 1981.

4. District records indicated that Ms. Ledbetter was again contacted on July 23, 1981 because of the tax check, and advised the contactor (a different employee than the one dealt with on July 14) that she had received an extension to file until the previous July 15, 1981 and that by arrangement on the previous contact, would file by Friday, July 24, 1981. (In fact the records and recollection of employees involved shows that she had promised to file by Thursday July 16, 1981).

The District advises after interviewing the employees involved that no one can recall advising the taxpayer to wait to file until after all her records were received.

We trust that this satisfies your inquiries on this matter. If there are any further questions please contact us.

The CHAIRMAN. Ms. Ledbetter, were you aware of the fact that the IRS had initiated a tax delinquency investigation against you in an attempt to secure your 1979 return?

Ms. LEDBETTER. I was not.

The CHAIRMAN. Did you advise the committee that you were advised to wait until after the records were received?

Ms. LEDBETTER. Not to my knowledge.

If there is any suggestion that I did, I think that my comments were misconstrued.

I was advised to file a return immediately, secure the records, and then amend the return as necessary. The only record that I have with respect to an extension shows the automatic extension I received and later the special extension.

I did talk to a representative of the IRS approximately July 14 or thereabouts, as your records indicate, and did say that I hoped to have those returns in by the 16th.

It is not my recollection now or at any time previous that anyone said that I could wait beyond the 15th to file. I think at all times I was advised that I should get them in as soon as possible and that I should secure the records and then file the appropriate amendment.

The CHAIRMAN. You do not recall telling the committee that?

Ms. LEDBETTER. I do not recall telling the committee that someone had permitted me, by virtue of a conversation with them, to extend the date verbally. No. I do not.

If that is the record, then I believe that my comments were misconstrued.

I cannot say that something that I said may not have given them that impression. It certainly was not my intent to give them that impression. And it is certainly not my recollection that anyone, by virtue of a verbal conversation, extended the time beyond July 15.

The CHAIRMAN. In regard to your 1979 tax return, on December 3, 1981 you advised the committee that your failure to file was based upon the fact that you needed to accumulate necessary supporting documents for your refund. What advice, if any, did you receive from IRS in this matter?

Ms. LEDBETTER. I do not remember, sir, except that the continuing advice that I got was that I needed to go ahead and file, obtain the records, and then amend the return. Beyond that, I cannot recall any specific details with respect to any advice that was given.

The CHAIRMAN. I understand that the IRS officer left his calling card at your residence. Are you aware of the efforts made to contact you in this matter?

Ms. LEDBETTER. No. I am not. But that is not at all unusual. The mail at my residence is all put on a little ledge and everybody's mail is pretty much together. It is infrequent that the postman actually puts anything in our boxes. If a person personally left a card, there is the possibility that one would see it and there is a possibility that one would not.

I do not remember receiving any call. The letter that I received from Mr. Chandler—and I believe his name is Mr. Chandler—is the first recollection on my part of being personally contacted by the IRS other than receiving a mail notice.

The CHAIRMAN. Ms. Ledbetter, was your appearance at the Providence office of the IRS on July 14, 1981, prompted by the fact that you had signed waivers at the Justice Department in anticipation of your pending nomination?

Ms. LEDBETTER. I do not recall.

I think your records indicate that I signed the waiver on July 13 and if I signed the waiver on July 13 and the returns were due on July 15, I would think that the appearance on July 14 certainly might have been related thereto.

The CHAIRMAN. According to the information submitted to the committee by the IRS, you were granted a 2-month automatic extension until June 15, 1981, and a second extension of time through July 15, 1981, to file your 1980 taxes. You appeared at the IRS office in Providence, R.I., on July 14, 1981, to file your 1979 return.

Why did you not file your 1980 return at that time?

Ms. LEDBETTER. I did not file my 1980 return at that time because I was still weighing the possibility of income averaging and I simply was not ready to file.

The CHAIRMAN. What reason did you have for not being ready to file?

Ms. LEDBETTER. I was reviewing the possibility of income averaging and I simply was not ready with materials or the documents at the time I appeared on July 14. I think that I subsequently left town on business for a few days.

The CHAIRMAN. The IRS advised us that on July 14, 1981, you informed them that you would file your 1980 return on July 16, 1981. However, your 1980 return was not filed until July 24, 1981, 9 days after your last extension had expired.

Can you explain to the committee this delay in filing your 1980 return?

Ms. LEDBETTER. Yes.

As I said, on July 14 when I filed the first return I was not ready with the second return, which was the 1980 return. I subsequently went out of town, came back, finished the return, and filed it.

That is a period of 9 days, as you correctly note.

The CHAIRMAN. Did you take advantage of the income averaging?

Ms. LEDBETTER. Yes. I did. I found out that income averaging would be the best. In fact, in the 1979 return I actually owed no taxes and was due a considerable refund. In the 1980 taxes for the first time I owed taxes and the income averaging did help.

The CHAIRMAN. After filing your 1980 return you received another communication from the IRS dated September 2, 1981, which requested additional information to substantiate the claims listed in your 1980 return. Although you had already paid the IRS $165 upon filing your 1980 return, you subsequently received a bill from the IRS on December 4, 1981, indicating that you owed an additional $874.01, which included additional tax, penalty, and interest.

At the time you filed your 1980 income tax return were you satisfied with the accuracy of the information you had provided to the IRS?

Ms. LEDBETTER. I not only was satisfied with it, I actually checked it over at the IRS office in the presence of an IRS representative. Again I believe the person was Mr. Chandler and we both reviewed or looked over it briefly and thought that it was at

least complete. When I did receive the communication—which was not September, and I think that is a mistake—I do not know that one was not sent in September but I received it in December and it was apparent that a mistake had been made. I subsequently corrected that, refigured the tax and paid the bill.

The CHAIRMAN. Subsequent to sending your payment of $874.01 to the IRS on December 20, 1981, did you file an amended return for your 1980 taxes?

And, if so, what was the purpose of filing the amended return?

Ms. LEDBETTER. I certainly did file an amended return.

In the notice that I got from the IRS I found the reason given for the discrepancy to be in error. I found the error to be that I had subtracted where I should have added. And when I refigured the amount, the amount did not agree with the IRS amount.

I refigured it, called the local office, found out that I could file an amended return, went down to the office, and picked up an amended return, filled it out and mailed it.

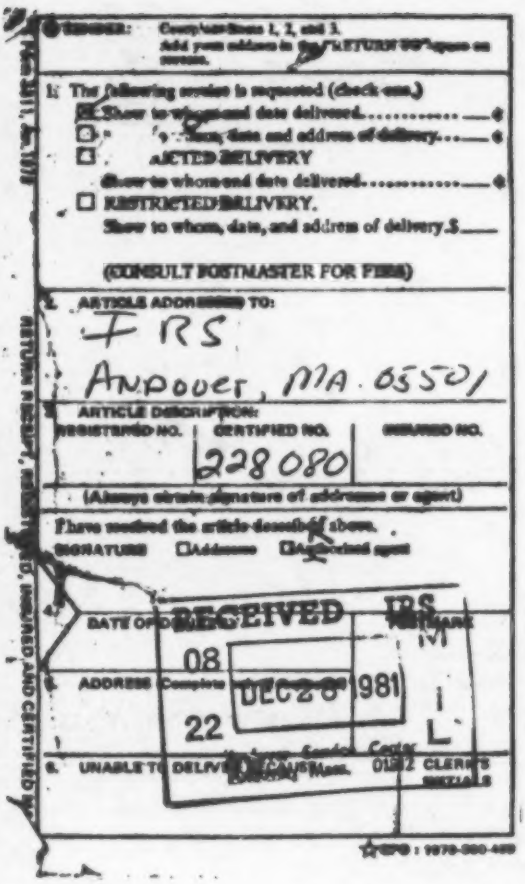
The CHAIRMAN. Can you now tell the committee what the status is of your 1980 income tax return in its amended form?

Ms. LEDBETTER. Well, I certainly hope all of it is finished.

I was advised by the committee that IRS had said that they had not received it. However, once I knew that this was such an important issue, I took the opportunity to secure a return receipt. And, in fact, I so informed the committee and I have receipts with me.

The CHAIRMAN. That will be made a part of the record.

[The following was received for the record:]



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P.O., STATE AND ZIP CODE
ANDOVER, MASS.

POSTAGE		$.20
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE	.75¢
OPTIONAL SERVICES	SPECIAL DELIVERY	2.10
	RESTRICTED DELIVERY	¢
RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	.60¢
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		$3.65

POSTMARK OR DATE

PROVIDENCE, RI
DEC 21 1981
USPO

xrm 3800, Apr. 1976

BEST COPY AVAILABLE

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS
Print your name, address, and ZIP Code in the space below.
- Complete items 1, 2, and 3 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

RETURN TO

Beverly E. Ledbetter
(Name of Sender)

77 Williams St., # 1
(Street or P.O. Box)

Providence, R.I. 02906
(City, State, and ZIP Code)

PS Form 3811, Jan. 1978

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- ☐ Show to whom and date delivered.....¢
- ☐ Show to whom, date and address of delivery.....¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered.....¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery.$____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
INTERNAL REVENUE SERVICE
Andover, Massachusetts
05501

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. | INSURED NO.

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY: APR 19 1982 POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

☆GPO : 1979-300-499

P 358 447 865
RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO
Internal Revenue Service
STREET AND NO.
Andover, Massachusetts
P.O. STATE AND ZIP CODE
05501

POSTAGE		$
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE	75 ¢
	SPECIAL DELIVERY	¢
OPTIONAL SERVICES	RESTRICTED DELIVERY	¢
RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	60 ¢
	SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		$1.35
POSTMARK OR DATE		

APR 15 1982 USPO

PS Form 3800, Apr. 1976

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The CHAIRMAN. Have you filed your 1981 tax return as of this date?

Ms. LEDBETTER. I certainly have.

The CHAIRMAN. When did you file it?

Ms. LEDBETTER. On April 15 I filed an automatic extension and paid the overdue tax; 2 weeks later I sent in the return itself. In fact, less than 2 weeks later.

The CHAIRMAN. Would you mind repeating that answer?

Ms. LEDBETTER. On April 15 I filed the automatic extension and paid the taxes that were due. I sent IRS a check. And within 2 weeks I filed the return itself.

So, I filed the return before the end of April, but I did file the automatic extension before April 15, before the deadline.

Again I filed it with a return receipt requested.

The CHAIRMAN. Was there any difference in the amount you paid for the automatic extension and the return you filed later?

Ms. LEDBETTER. About $1,300.

The CHAIRMAN. How much?

Ms. LEDBETTER. About $1,300.

The CHAIRMAN. $1,300.

Ms. LEDBETTER. Yes.

The CHAIRMAN. Additional or less?

Ms. LEDBETTER. Additional. Which I paid.

The CHAIRMAN. You paid $1,300 additional?

Ms. LEDBETTER. Yes. That is correct.

The CHAIRMAN. You said you have filed your 1981 tax return.

Ms. LEDBETTER. Yes.

The CHAIRMAN. Ms. Ledbetter, on these taxes, some records are being checked in the investigator's office and they may have some more questions for you to answer on that.

Ms. LEDBETTER. All right.

The CHAIRMAN. Ms. Ledbetter, what experience and background do you bring to the Department of Justice that will assist you the most in serving as an Assistant Attorney General for the Office of Research Statistics and Special Projects?

Ms. LEDBETTER. For the past 9½ years I have been general counsel or in a similar position at a major institution of higher education. I believe that institutions of higher education are microcosms of society. I believe that the experience that I have had being involved in the resolution of differences at the local level on the campus, the crises that I have assisted in and the results that I have achieved, and the experience that I have had in acting as a liaison between the university and the external community, will all serve the Department well in the position of Assistant Attorney General for Research Statistics and Special Projects.

The CHAIRMAN. What do you view as the major priorities facing you in your new position?

Ms. LEDBETTER. I believe that with respect to the reduced funding that JSIA agencies will be experiencing, that there will be a greater need than ever to have someone who will act as a liaison between the agencies and the Department and between the agencies and the external community, particularly the local and State governments, in receiving and giving advice with respect to the interface between the agencies and the local and State communities.

The CHAIRMAN. Are you familiar with the joint State and local organized crime and narcotics programs, known as the multi-State projects?

Ms. LEDBETTER. I am generally acquainted with the multi-State projects. I am not familiar with any specific multi-State project.

The CHAIRMAN. Will the oversight of these projects fall within your scope of authority? And do you support the concept of State and Federal Government maintaining a closer working relationship in the exchange of information related to organized crime and narcotics?

Ms. LEDBETTER. The regional centers or efforts would, in fact, fall within my authority.

I do support a sharing of information between local and State agencies and between States.

I do not have any specific information on the operation of those programs. So, I can only say that I support the concept of sharing. I do not have any information with respect to the specific programs or the operation of them.

The CHAIRMAN. I am aware that the multi-State projects have had some difficulty in receiving funds which have been previously appropriated but have not been timely distributed.

Would you please look into the matter of fund distribution and let me know the status of those appropriations?

Ms. LEDBETTER. I would be happy to look into them, if I am confirmed in this position. I do not have any specific information about the funding of the projects. I do know that any number of agencies and agency programs are, in fact, subject to some reduction in funds but I do not have any specific information. I can only say that I support, and I believe that the Department supports, the concept of sharing of information between local and State agencies and between the States. How that is to be implemented or what agency or at what level the impetus comes for the sharing of that information, remains to be worked out.

The CHAIRMAN. Well, would you look into that and report to us on the fund distribution?

Ms. LEDBETTER. I certainly would, sir.

The CHAIRMAN. Ms. Ledbetter, it might be helpful and productive to have the various multi-State project directors meet with you in order for you to obtain their input and assistance.

Would you be agreeable to such a meeting?

Ms. LEDBETTER. I would welcome the opportunity to meet with them.

The CHAIRMAN. On October 28, 1981, Mr. Stan Morris, Associate Deputy Attorney General, testified before this committee or Subcommittee on Juvenile Justice, and in response to a question from Senator Specter concerning the authority and responsibilities of the position for which you have been nominated as it relates to other units within the Department of Justice, Mr. Morris responded:

> The Assistant Attorney General's authority and responsibilities do not in any way alter the statutory authority vested in the heads of OJARS, LEAA, NIJ, BJS or OJJBP. The heads of those units will continue to exercise their responsibility for day-to-day program and grant-making activities. The Assistant Attorney General will exercise on behalf of the Attorney General the general authority specified by

statute over LEAA, NIJ, BJS and OJJBP and the general authority and policy control of OJARS conferred by the Justice System Improvement Act.

Ms. Ledbetter, what have you been told concerning your authority and how do you interpret the meaning of the term "general authority and policy control"?

Ms. LEDBETTER. I have been told that the position would primarily have administrative oversight for the area, not for any specific program; that there was absolutely no intent on the Department of Justice's part to usurp any of the authority or the responsibility of the individual directors of BJS or the research program or any of the other programs; that primarily the position would provide an interface between those agencies as a whole and the Justice Department, between those agencies and other areas within the Justice Department, between those agencies and other departments within the Federal Government, and between those agencies and local and State governments.

The CHAIRMAN. Would they report directly to you?

Ms. LEDBETTER. I do not think that the "reporting directly to me" would be the appropriate way to describe it. I think they are quasi-independent operations and I would certainly have some responsibility for the areas. They would certainly report, as far as the Department of Justice is concerned, as quasi-independent agencies. I think the structure or the organization would perhaps make me the interface between those agencies and the Department of Justice, but they certainly operate under the "general authority" of the Attorney General.

The CHAIRMAN. Do you know whether the Department of Justice had a job description for your position?

Ms. LEDBETTER. Sir, I cannot answer that question. I have not seen a "job description."

However, a scope of responsibilities was provided to me by Deputy Schmults, which detailed that the administrative oversight for the agencies, as well as the liaison responsibilities within the Department of Justice and between the Department of Justice and the local and State governments, would be my responsibility and that it would also include some special programs or projects that would be outlined and detailed at a later time.

The CHAIRMAN. S. 2411 introduced on April 21, 1982, states in part that Congress finds that there is an urgent need to encourage basic and applied research together and disseminate accurate and comprehensive justice statistics and to evaluate methods of preventing and reducing crime.

Ms. Ledbetter, are you familiar with this bill and do you agree that there is an urgent need for such information?

Ms. LEDBETTER. I hesitate to answer that I am "familiar" with it. I am certainly aware of it. I certainly agree that there is an urgency and there is a need.

The CHAIRMAN. In the House of Representatives Congressman Hughes of New Jersey introduced H.R. 4481 to place $170 million in the budget to assist State and local police departments. This money would restore funds lost with the phaseout of LEAA.

Do you support such an effort? And, if so, how do you think these funds should be distributed?

Ms. LEDBETTER. As I said before, I think the urgency to resolve the issue is there and I believe that the need for some continuing interface between the Justice Department and local and State governments is there.

I am not totally acquainted with the measures of obtaining those objectives that appear in either of the two bills that you have mentioned. I have read the bills and I believe that the bills both address themselves to continuing efforts with respect to the five agencies or with respect to some of the five agencies. I am not familiar with the details of those bills. And I can say that I only know that the Department of Justice is interested in continuing an interface. How that will be achieved, I am not sure of.

The CHAIRMAN. Ms. Ledbetter, the committee is interested in hearing your views on the use of deadly force by law enforcement personnel.

Ms. LEDBETTER. It is not a matter that I have particularly investigated in preparation for these hearings. The only opinions that I would have with respect to the matter would be mine and mine alone.

I am not sure that there is particularly anyone who advocates an excessive use of deadly force. But I do not have any particular opinion with respect to any measures that are currently being undertaken by the local or State governments with respect to that issue.

The CHAIRMAN. In other words, would you approve of law enforcement officers using deadly force, if necessary, to carry out their duties and responsibilities?

Ms. LEDBETTER. I believe implicit in the word "necessary" is an affirmative answer to your question. I am not sure what that really entails. But if one says "if necessary," I assume that it means that it is the only way or that it is the most prudent way of discharging one's responsibilities.

I am simply not aware of the issues that relate to a discussion of the use of deadly force by officers.

The CHAIRMAN. If an officer was confronted by a person with a weapon and was threatening the officer, do you feel the officer would have a right to protect himself and use such force as necessary to do so?

Ms. LEDBETTER. Sir, I believe that everyone has the right to use the requisite amount of force to protect himself. I certainly would not advocate standing by idly and being injured in any way.

I do not know what that requisite amount of force is and I am not familiar with any of the subtle nuances that might surround the use of the term "deadly force." But certainly I would acknowledge that every citizen, including police officers, would have the right to, in fact, defend himself.

The CHAIRMAN. Ms. Ledbetter, would you give the committee your views on the death penalty?

Ms. LEDBETTER. Excuse me. But I have never been asked for my views on the death penalty before. So, I am not so sure that I have formulated a firm answer to that.

There certainly have been times—I have never been in a position——

The CHAIRMAN. Of course, you understand that is where a jury has heard the case and has agreed on the death penalty for a criminal.

Do you believe in the death penalty?

Ms. LEDBETTER. As I said before, I have never really sat down and formulated an opinion. There certainly have been times when I felt that the facts that had been made known, that the circumstances of the crime, certainly justified a severe measure or penalty in return. I have never sat down and determined whether or not I was personally for or against the death penalty. I assume that I have, in fact, accepted that as the greatest measure of punishment that could be meted out in any particular instance.

The CHAIRMAN. Well, you can answer a simple question, I think. If the jury found the man guilty, would you favor upholding that verdict unless there is some reason to reverse it?

Ms. LEDBETTER. Yes.

The CHAIRMAN. Ms. Ledbetter, what are your views on gun control?

Ms. LEDBETTER. Again I have never formulated any personal opinion with respect to that issue. I have never found it necessary to do so.

The CHAIRMAN. Do you think people ought to be allowed to keep guns in their home to protect themselves?

Ms. LEDBETTER. Sir, in all honesty, I would simply have to say to you that I have not formulated an opinion on that.

I grew up in an area where it was quite customary for people to keep hunting rifles and so forth in their homes.

I have always supported the notion that people have the right to protect themselves. I have never particularly engaged in discussion or comment with respect to the issue of whether or not there ought to be gun control. And certainly being placed in a very public position, such as Assistant Attorney General, I would want to review all the data and information before I expressed a personal opinion with respect to that matter.

The CHAIRMAN. What would you think about a bill that would provide for a prison sentence for a man or a woman who committed a crime with a gun?

Ms. LEDBETTER. That would provide a determinate sentence?

The CHAIRMAN. That would provide a prison sentence.

In other words, if a man commits a crime with a gun, you would punish him for carrying the gun to commit the crime and put him in prison for it if he is convicted.

What would you think of that in addition to punishment for the crime?

Ms. LEDBETTER. My personal opinion is that I would support that.

The CHAIRMAN. Is what?

Ms. LEDBETTER. I would support that.

The CHAIRMAN. Ms. Ledbetter, what are your views on President Reagan's Task Force on Violent Crime? Do you agree with the President that violent crime must be a high priority item? And how will your office meet its responsibility in the solution of the violent crime problem?

Ms. LEDBETTER. I certainly agree with the President that violent crime is a high priority.

I believe that the best way for me, as an Assistant Attorney General and for the area that I would represent in particular, to address the issue would be to assist the administration in securing or initiating some efforts to secure an attitudinal change among the American populace. And that is that I believe that before we can really make an effective dent in crime, we are going to have to accept as a nation and we are going to have to accept as a people that there really is something that we as individuals, that we as communities, can do about crime. And it is my opinion that that is the major point that the administration is trying to make with respect to the issue. And I certainly support that.

The CHAIRMAN. Ms. Ledbetter, the position for which you have been nominated has been vacant for some time.

Will you, if confirmed, be able to immediately report to work and attempt to resolve the many problems faced by this division of the Department of Justice?

Ms. LEDBETTER. I am not sure that the position that I have been nominated for has been vacant. I believe that it is a new position and has never been filled before.

Am I correct?

The Assistant Attorney General for Research Statistics and Special Projects I do not believe has existed in the past as a position within the Department of Justice.

The CHAIRMAN. I understand it is a new position of Assistant Attorney General.

Ms. LEDBETTER. Yes, sir. It is.

The CHAIRMAN. Would you be able to report to work immediately if you are confirmed here?

Ms. LEDBETTER. Sir, I could not report in the next few days.

The CHAIRMAN. How soon could you report?

Ms. LEDBETTER. I really do not know. I think that I could report in a matter of 5 or 6 weeks and be on board fully.

I have not secured any housing in this area. I simply could not afford to make any permanent plans for living here barring some notice of whether or not the position would be confirmed.

The CHAIRMAN. Have you made any other commitments that would not allow you to report?

Ms. LEDBETTER. I have commitments through June 6 of 1982 that I would like to keep. If it is absolutely necessary, then I suspect that some arrangements could be made.

But, yes, I do have commitments through June 6.

The CHAIRMAN. And you could report right after that?

Ms. LEDBETTER. I could.

I do not know whether that would be desirable or requested.

The CHAIRMAN. I understand that Senator Specter and Senator DeConcini may have some questions and there may be some questions by other members of the Judiciary Committee. If they are transmitted to the staff, the staff will transmit them to you for reply.

Is there anything else you would like to say?

Ms. LEDBETTER. I would be pleased to answer the questions.

Nothing, except that I thank you for the opportunity of appearing before the committee and I hope that I have been able to answer the questions to the satisfaction of the committee.

I look forward, if confirmed, to providing service to the Department of Justice and to the Federal Government.

The CHAIRMAN. I think that is all.

Thank you, Ms. Ledbetter.

Ms. LEDBETTER. Thank you.

The CHAIRMAN. That is the only hearing we have this afternoon. So, the committee stands adjourned.

[Whereupon, the committee was adjourned at 3:10 p.m.].

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